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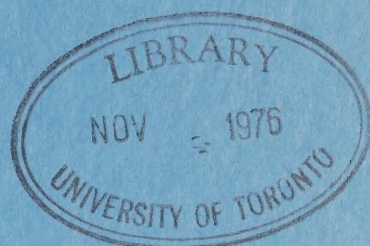
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Government
Publications

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION



M E E T I N G

held at

The Frost Building, Queen's Park, Toronto

on

FRIDAY, MARCH 21, 1969

VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Government
Publications

Meeting held in the Board Room, 5th floor,
ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

PRESENT:

Mr. I.M. Macdonald (Chairman)

Prof. A. Brady

Prof. D.G. Creighton

Prof. J. Donway

Dr. E. Fox M E E T I N G

Prof. F.W. Fox

held at

Mr. G.E. Gathercole

The Frost Building, Queen's Park, Toronto

Rev. Dr. L. Matte

on

Prof. J. Meisel

Mr. J.M. FRIDAY, MARCH 21, 1969

Mr. E.R. Dick, Q.C.

Deputy Attorney General

Mr. F.W. Callaghan, Q.C.

Senior Crown Counsel,
A.G.'s Dept.

Mr. D.W. Stevenson

Co-Secretary

Mr. E. Greated

Mr. P. Liskowsky

Mrs. J. Wilensky

Mr. D. Hobbs

Secretariat

VERBATIM REPORT OF PROCEEDINGS



ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 6th floor,
The Frost Building, Queen's Park, Toronto,
on Friday, March 21, 1969.

PRESENT:

Mr. I.M. Macdonald (Chairman)

Prof. A. Brady

Prof. D.G. Creighton

Prof. J. Conway

Dr. E. Forsey

Prof. P.W. Fox

Mr. G.E. Gathercole

Dean W.R. Lederman

Rev. Dr. L. Matte

Prof. J. Meisel

Mr. J.H. Perry

Mr. A.R. Dick, Q.C. Deputy Attorney General

Mr. F.W. Callaghan, Q.C. Senior Crown Counsel,
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Mr. D.W. Stevenson Co-Secretary

Mr. E. Greathed)

Mr. P. Lishchynski)

Mrs. J. Wilensky)

Mr. D. Hobbs)

Secretariat

-----At 9.40 a.m.

THE CHAIRMAN: Well, I think we might begin. I have heard that Professor McWhinney was detained at the last minute by other business and so he will not be here as he had hoped to be; and President Symons has some complications in his home base but hopes to be here for part of the day. Otherwise I think we are all accounted for as far as I am advised.

Item 1 is "Opening remarks by the Chairman", which will be very brief and perfunctory, because I think anything I would have to say is better covered in the following points; except to say that the Constitutional Conference of February, of course, is now behind us and many tasks are now ahead of us.

My only personal thought about the conference in February was the pleasant feeling that once again the many Cassandra's had been confounded and the country still stands intact. And, of course, elaborate machinery has been set up so that one would have the feeling that Mr. Bertrand has, on the one hand, consolidated his position in Quebec but, on the other hand, seems to be under some compulsion to establish a timetable for settling some of the constitutional questions and to give greater urgency to them.

As far as the proceedings of the day are concerned, we have the agenda and a large

part of the work of the day, I should think, should be concerned with the new draft propositions which have been prepared recently and which we will be coming at here for the first time.

As far as timing is concerned, I will have to leave at twelve-fifteen myself. My colleague, the Deputy Minister of Finance from Ottawa is coming down to-day to discuss some matters of importance, so I will be with him between twelve-fifteen and about two-thirty.

I thought we can get started on the propositions and the Committee can treat itself as a Committee of the Whole, so to speak, and keep working on the propositions through the first hour after lunch, say one-thirty to two-thirty, and I will be back by that time to tidy up the other matters later on in the afternoon.

Coming then to item 2 - an assessment of the February 10-12 Constitutional Conference, I wonder if there are any comments that, first, any members of the Committee have to make on their feelings about the conference and what it purports for the future; or if Mr. Stevenson or Mr. Greathed wants to make any report on the consequences as far as they are concerned in terms of work and so on.

MR. PERRY: Has there been any dialogue or flow of communications since the

conference at all between yourselves and Ottawa, the provinces and Ottawa?

THE CHAIRMAN: I think a fair amount, Harvey, at the level of officials; recapitulation of what things meant, some joint consideration of the simple mechanical problems of how to operate these many committees that are now established. I think, if you recall, there are now six principal working ministerial committees that came out of that conference: one on fundamental rights, one on language, one on the Senate, one on the judiciary, the Tax Structure Committee to deal with financial problems, and the committee on regional disparities (yet to be set up) to deal with economic disparities.

So those are six ministerial committees, supported still by the Continuing Committee of Officials, plus the study committee on the national capital. A good deal of the time since, as far as the officials have been concerned, has been spent over contemplation of the machinery to run these engines.

MR. PERRY: Gathering of the wits, in other words.

PROF. FOX: Has there been anything that can be reported, Mr. Chairman, on the language Bill? One saw in the paper the

report of Mr. Turner consulting with the provincial Attorneys-General, but no subsequent report.

THE CHAIRMAN: I have heard nothing on that myself. I don't know if anyone else here has.

MR. STEVENSON: No, other than the fact that the federal government is contemplating, I think, a slight revision to it as the result of the discussions out west, but as to what the revisions are we don't know.

MR. GREATHED: Mr. Turner met with the Quebec people too about two weeks after he met with the western Premiers.

DR. FORSEY: Are they contemplating taking it to the Supreme Court of Canada for an advisory opinion?

MR. STEVENSON: I think the aim was that if these slight revisions could meet the points raised by the people out west, a trip to the Supreme Court might be avoided, although I am not sure that that is the situation.

DR. FORSEY: There was some talk at one stage about the provinces taking it to the Courts themselves. I didn't see how they could do that until it had been passed and had a test case. Is there any means by which the provinces can refer a piece of

prospective Dominion legislation to the Supreme Court? Not that I know of.

DEAN LEDERMAN: Yes, they can do this, Eugene.

DR. FORSEY: They could?

DEAN LEDERMAN: Well, any question can be referred in the Bill stage.

DR. FORSEY: By the provinces?

DEAN LEDERMAN: Yes. Not directly to the Supreme Court but they are referred to their own Courts of Appeal and then it is appealed.

DR. FORSEY: I thought they could only refer their own Bills.

DEAN LEDERMAN: No, just as there is no limit on the federal power. They referred the Alberta Bill.

PROF. CREIGHTON: Yes, they did indeed.

DEAN LEDERMAN: It works the other way too.

MR. PERRY: Mr. Chairman, do the officials seem to feel they have had indication that financial matters should assume a greater priority as the result of some of the discussions at the conference, or have you carried on with a fairly structured sort of discussion?

THE CHAIRMAN: We have yet to have any official communication on either the form

or substance of the Tax Structure Committee or the committee on regional disparities.

In view of recent experience and in view of the urgency of some of the problems, some of us at that meeting in February were trying very hard to contrive to have a date put on the work of the Tax Structure Committee for reporting by such and so a time, but that was not done, as you know.

Now, there is to be a meeting of the Continuing Committee on Fiscal and Economic Matters in the middle of April, which is to consider preparatory material for a meeting of the Tax Structure Committee which is supposed to take place early in the spring.

Also in mid-April the Continuing Committee of Officials will have a three-day meeting in Ottawa, and probably a second meeting in May, the end of May, to consider both the distribution of powers in particular and the work of the conference in general.

Then, although this is not public knowledge, the Prime Minister of Canada has proposed in the middle of June a meeting of the Constitutional Conference, but not a public meeting; a working meeting of Prime Ministers and their officials on the Continuing Committee of Officials, as a kind of clearing house meeting

to get down to brass tacks.

MR. STEVENSON: And in the interim the hope is expressed that some of the ministerial committees will begin meeting.

THE CHAIRMAN: Yes, they will be meeting along the route. It is going to be very, very hard, however, for all of these ministerial committees, I think, with sessions on and with their other obligations, to find the time for this - when you think of your own Minister, Rendell, as Attorney-General.

MR. DICK: Lots of time!

THE CHAIRMAN: And ministerial committees lined up to worry about - ministerial or magisterial, or whatever.

MR. DICK: Mistril!

MR. PERRY: Is there a sort of official shadow committee of officials for each of these ministerial committees now?

THE CHAIRMAN: No, the idea is that the Continuing Committee of Officials would be the co-ordinating core to serve all of these committees, but then these sub-committees will have to have staff work done obviously, and the question that we will consider in April, I imagine, is how the staff work of the ministerial committees will be linked into the overriding staff work of the Continuing Committee of

Officials to ensure co-ordination and all the rest. I think the C.C.O. probably will have to hire a systems analyst at the next meeting to set up the machinery. It is really a terrible problem. Every time one goes into a meeting, for example, with Ministers and so on, you refer to a committee and you have to make sure everyone is talking about the same committee, to get these names and labels attached.

MR. GREATHED: I think, Mr. Chairman, Ed Gallant was saying to us the other day that he very much hoped that the ministerial committees would meet first, and that the ministers themselves would assess the kind of problem with which they are faced, in determining themselves what kind of staff work had to be done, to review the work that had been done so far; then instruct the Continuing Committee and instruct Ed Gallant's secretariat just exactly what they wanted to do, rather than try to determine as much in advance, because they may have their own particular ideas about how they want to proceed, particularly as they have the responsibility of reporting to the conference ultimately about the kind of work that they should be doing.

THE CHAIRMAN: My own feeling is that the very establishment of these ministerial

committees is going to expedite the practical aspects of these matters considerably. I think in a lot of the things on which there has been a lot of work done they will move very quickly in applying themselves to the solution of the problems that exist.

MR. DICK: I would think so.

The thing that impressed me that will speed it up tremendously is that at the Continuing Committee of Officials meeting so many of the provinces' civil service representatives just would not take a position or even state a proposition on so many fundamental things, that it was very difficult to even know what was in people's minds.

The excuse was always: "We are civil servants and not permitted to open our mouths unless somebody rattles our chain" sort of thing; so they would sit there and you would not get anywhere.

Now, with the ministers sitting there in committees like fundamental rights and the judiciary, I don't see how you can put a bunch of Attorneys-General and so on in one room and not get some fairly vocal expression of what they think of the Bill of Rights, for instance, and these men will be speaking on a policy level.

So I think that the thing is bound,

just by virtue of having those men in one room, you are bound to get a reaction that will tell us something about where we should be going, what they want, and what they are looking for from us.

I think the big problem and the thing that I would like to see precipitated - and perhaps Mr. Trudeau in his correspondence obviously, and from Mr. Robarts' reaction, Mr. Trudeau is going to make the ministers who are responsible for some of this now call dates for meetings in the very near future.

I would think it would be a very great imposition on the ministers' time, because all we have to do is to get those ministers there for perhaps two full days and I think they will manufacture enough general policy direction to keep a lot of civil servants working considerable hours to put something together for another meeting. So I think it is bound to accelerate now, I hope.

PROF. FOX: Well, that is interesting, Rendell, because that implies that you feel that the ministers involved have really made up their minds, or that they are speaking on behalf of governments that have made up their minds on a number of these issues - for example, whether or not there ought to be a Bill of Rights, etc. I am encouraged but surprised to hear it.

I would have thought perhaps ministers would be reluctant in the case of some provinces where discussions have not gone on as thoroughly as they have, for instance, in Ontario; you know, that they simply would not have reached the point where the cabinet would have taken a position on this or this or this.

MR. DICK: They may not have, Paul, but just from my general feeling of the meeting in February and so on, for instance Darrell Heald in Saskatchewan was a heck of a lot more affirmative in what he was saying than his deputy had been at the Continuing Committee of Officials.

I think this is true of Alberta to a great extent too: Gerhart seemed to, although you can't say Frawley hadn't made himself clear at the Continuing Committee of Officials. Here again, the Attorneys-General seemed to be, in the statements - many of the ones where provinces had been "iffy" at the other meetings, the ministers at that conference were saying things that were fairly well-defined, I think; they indicated positions anyway.

Then the other thing I look forward to, perhaps on something like fundamental rights, where we suggested something which might be an area of discussion: that this will surely

have fallen on some of the other Attorneys-General and they will have considered that and perhaps will find out if there is any feeling from other provinces that this is perhaps the area to which we should be looking - in other words, a compromise between the completely entrenched Bill of Rights covering every phase, or something in between. We hope that that fodder has fallen on somebody's manger, and that it will be digested.

PROF BRADY: The ministers might not have made up their minds, but they have to say something.

MR. DICK: That is right. Civil servants can sit and say nothing, and nobody blames them.

DEAN LEDERMAN: It does not follow that they have to address themselves to policy because their minds are made up on policy, but they have to say something and some of it, I suppose, may be at the tentative level but they won't be afraid even of tentative discussions, conditional discussions.

MR. DICK: No, not that the civil servants said.

DEAN LEDERMAN: Discussions without prejudice, so to speak.

MR. DICK: You are making it sound

like a fencing game all over again - with respect sort of thing.

FATHER MATTE: Has the Province of Ontario made any study of the distribution of powers, because definitely one of the main problems is the problem of taxation, and prior to that the logical approach to that is the distribution of powers.

The Province of Quebec in their working document have already approached that, but I wonder if we have paid enough attention to that problem of distribution of powers.

THE CHAIRMAN: Well, certainly it is right up at the forefront now, and I think in a number of the propositions we are considering to-day this is where we need to place our attention.

MR. STEVENSON: I think that the way that the distribution of powers will probably be introduced will be at this meeting in April - a discussion of the spending power and possible limitations on it, and possibly then the taxing power; before moving into a discussion of functional distributions, which I think will be something that should be hitting the inter-governmental stage around late May or June.

However, internally certainly there has been quite an acceleration of an attempt to come down on positions within the government.

We are just getting back now the views of all of the departments on their own problems in inter-governmental relations and their views as to what changes might well be made in existing arrangements.

I would hope that over the course of the next month we will be able to put these together, test them against some common principle, and develop a set of propositions, certainly well in advance of the Prime Ministerial meeting in June. I would hope for an officials' meeting in May.

PROF. CREIGHTON: Mr. Chairman, can I ask Mr. Dick if he could tell us what is the nature of the more affirmative responses that you are getting at these meetings from the western Attorneys-General.

PROF. CREIGHTON: Well, I am not sure, Professor Creighton, when you put it that way. I don't know that they were affirmative responses. I perhaps contrast it with the Continuing Committee of Officials where you got a completely negative response.

THE CHAIRMAN: Or no response.

MR. DICK: Or no response at all. It was like nailing jelly to a wall to find out from these people what they did feel about an entrenched Bill of Rights.

In Alberta, of course, Mr. Frawley was vehemently opposed to the whole thing, no entrenchment of anything; that it was all a taboo and he wouldn't have any part of it. I think he felt - he certainly indicated he was speaking for his government when he said that.

Manitoba said nothing. Terry Benson would not speak to anybody about anything, for fear it would be a commitment on the part of Manitoba.

Saskatchewan wasn't that bad, but still wouldn't say anything except towards the end with Professor Schmeser they did come out and give some reasons. They did not come out the way Frawley did and say "We are opposed to everything, period", but they pointed out the difficulties and so on with respect to, say, fundamental rights and the problems raised by an entrenched Bill proposition.

PROF. CREIGHTON: This question of mine is prompted by Professor Fox's remarks that they had not done as much thinking about the matter as they have in Ontario and Quebec,

I think they have done quite a bit of thinking about it. I think they have been gradually entrenching themselves in a positive and negative attitude and this is what you are going to find, particularly, of course, to the

idea of the Bill of Rights. Benson's view I know very well, and it is quite strongly opposed and I think he represents his government.

MR. DICK: I would be just be speaking for myself. I don't know how it came through to Ian and Don and Ed and the rest of the fellows that were there; but, for instance, Mr. Frawley, whether he was doing it intentionally or not, in a lot of his commentary was looking at an entrenched Bill as being an excursion into the field of provincial rights (which it doesn't do). He also seemed at times in his comments to make it appear as if it were vesting in the federal government new jurisdiction in the area of civil rights, which, of course, it does not do. I don't know, as I say, whether these were just intentional excursions into it, or whether he really did feel this is what an entrenched Bill of Rights meant.

Now, I think a lot of that is cleared up in the last few months. I think Professor Schmeser's comments - which I thought were exceedingly well put during our meetings of the Continuing Committee - were very lucidly and very eloquently put.

PROF CREIGHTON: What line did he take?

MR. DICK: Well, he took the line

of pointing out the difficulties - the fact that you were vesting in your Courts a very broad social responsibility, and are our Courts prepared for this sort of thing? Is that where we want to have responsibility for deciding fundamental issues arising from Bills of Rights but which in fact perhaps are more sociological in their concept than legal. He was getting into that area, and he was pointing out the difficulties that come with entrenchment and the things we should consider before opting for that type of remedy; and he was, with respect to the learned gentlemen here, lecturing us, I think, to some extent, not sort of promoting a proposition but just informing us about the ramifications of this concept. This is the line he was taking.

PROF. CREIGHTON: I think a lot of them feel a Bill of Rights is incongruous in the parliamentary system and did not want it for that reason.

DEAN LEDERMAN: For instance, Professor Schmeser pointed out, and the others pointed out that the provision that there shall be enjoyment of property and no deprivation thereof without due process of law, could frustrate vital urban renewal; that you can get Court Orders for compensation that just stop

urban renewal in its tracks. The whole zoning and planning by-law system involves the alteration of the content of property rights and, therefore, the economic value of property rights.

This has been one of the differences between the federal National Capital Commission and the Government of Ontario on planning. Mr. Justice Gibson spells this all out in his Judgment in *Munro vs. National Capital Commission*.

MR. STEVENSON: Mr. Chairman, I tend, as Rendell, perhaps to look at the change in positions from the point of view of having to listen to a totally negative or silent position from the western provinces from the officials' meeting last year. So what I think is the possibility of a general agreement of at least eight of the provinces on the entrenchment of four or five of the basic fundamental freedoms that Mr. Wishart was mentioning, and quite determined resistance to the entrenchment of very much else.

Now, I noticed in a summary of the discussions that I was reading this week, of February, that the Government of Saskatchewan position is put this way:-

"The Government of Saskatchewan

"accepts the principle that a Bill

"of Rights , guaranteeing fundamental
 "democratic rights be made part of the
 "constitution. In particular,
 "Saskatchewan agrees that the following
 "rights should be entrenched:-

"Freedom of religion;

"Freedom of the press;

"Freedom of speech;

"Freedom of assembly and association"

Some other political rights might be included,
 but Saskatchewan has some concern with three
 other sections of the first section of the
 federal proposal. This is quite a change.

THE CHAIRMAN: This is a noticeable
 shift.

MR. STEVENSON: From Saskatchewan's
 original position.

MR. DICK: The comments you were
 mentioning, Professor Creighton, from Professor
 Schmeser, this to my mind follows logically from
 the way he spoke. It was a recognition, as you
 say, of parliamentary sovereignty and the incon-
 sistency with an entrenched Bill of Rights and
 also the difficulties that arise in egalitarian
 and legal rights and so on.

It is a position, I think, that
 Ontario sort of came to, because I think I might
 say that to start with my attitude was almost

entirely that you are taking a system geared to parliamentary sovereignty and so on and you are aborting the whole system off in one direction without looking at the effect it is going to have on the overall constitutional system. But I think Mr. Robarts, after consideration, came to the conclusion that there must be some in-between, some modification we could make that would not prejudice the parliamentary system as we intend, at the present time in any event, to preserve it, but still you recognize those things which still seem to be close to some segments of our community.

DEAN LEDERMAN: I was simply going to say to Professor Creighton that the rationale of the Ontario position, I think, is this: that you consider for special entrenchment those personal and political freedoms and powers which themselves underpin the parliamentary system, and you go no further.

That is my position, and it has been my position since I expressed it publicly at the Canadian Bar Convention in Quebec City in 1967. This way you specially entrench freedom of speech, assembly, the press, religious freedom, which Dr. Cory points out had to precede - freedom of conscience and religion had to come before you could have the liberal democratic state at all, and also something which

the federal people keep leaving out and underplaying - the right to vote.

MR. DICK: And the right to election every five years, which many people think is fundamental.

DEAN LEDERMAN: Yes, all these things.

PROF. BRADY: These rights, of course, are in most cases already guaranteed in law.

DEAN LEDERMAN: Yes, in ordinary statutes or in common law.

PROF. CREIGHTON: I don't think it is necessary, however.

DEAN LEDERMAN: This is the type of compromise which -----

PROF. CREIGHTON: It doesn't really. I mean, this is a meaningless compromise. You are just affirming in another way what is presently the fact.

PROF. BRADY: It is an affirmation of your position which is expressed on the laws of your constitution.

DEAN LEDERMAN: This is what my friend Arthur Lawer calls "the great context of the Bible" approach.

DR. FORSEY: I think it may have rather more value than Professor Creighton states, but I suppose this is because I lived

in Quebec so long under the rule of Mr. Duplessis.

PROF. CREIGHTON: It is not going to make any difference there anyway, whether it is entrenched or not.

DR. FORSEY: No, wait a minute - because you have still got your courts with judges appointed by the Government of Canada which is a point of some importance.

I noticed in the extraordinarily misprinted article in the Canadian Forum of Peter Russell's, which I read rather hastily, he makes a point of this and suggests even that there is a certain invasion of provincial jurisdiction indirectly in this way, that you could have your Dominion judges pronouncing on the meaning of the guarantees.

THE CHAIRMAN: I think the thing that impressed me about the point Rendell Dick has been speaking about and others, is that the political process is essentially a dynamic process compared with the civil service process in this sense that on any particular day in any particular meeting the civil servant takes a given position, the present position, and that is as far as he is able to go, and as far as he should go.

Once you get into the ministerial
the
committee/whole process of political movement

begins, as it should, as politicians are being influenced by the views of others (as they should be); they are also being influenced by what they interpret to be moving forces among their constituents. I think this is the thing we have seen at work over the last year, for example, at the political level; we have seen it at work here in this province.

So that I think the point Rendell Dick was making was that at this stage, by getting into these ministerial committees the accommodation of positions is bound to move more quickly in one direction or another, I suppose, than it is at any further point in the civil service committees. We can only prepare the ground and not perhaps till it.

DEAN LEDERMAN: There is one further point, Mr. Chairman, I would like to make on the record as far as fundamental civil rights are concerned, since we are speaking of them -- fundamental rights, I should say. "Civil" is used in a peculiar sense of rights of the citizens as used in that phrase.

It is this, that our modern society is becoming so complex that there are some areas that are so fluid and have so many facets (Professor Fuller calls them polycentric) that they are not amenable to proper treatment by the

judicial process.

You have to be in a position to experiment, to try this solution, to try that solution, and to change quickly if something is not working.

I think the whole field of electronic surveillance and privacy is in this condition at the present moment. There is a whole new technology there that has sixty-five different implications, and there is something involved here that you cannot solve in court hearings.

The Americans have just finished putting a very complex statute through Congress in which they include a standing technological commission which has to keep up with technological problems and the technological developments.

You can manufacture these electronic listening devices in a back yard workshop, and you have got to start in to control this kind of thing.

There comes a point at which the judges can be integrated and can be very useful, and indeed essential to what you are doing; but the point comes where you decide legislatively that you are going to permit the police certain types of electronic surveillance in certain circumstances, provided they get a warrant from a judge. At that point the judge

can look at the criteria set out in the statute and say: "Yes, this looks suspicious enough and bad enough that in the public interest you should be able to do this. Her is your warrant. Report next week to us about what you find, and keep coming back every week" - something like that.

But this is another factor of the situation. There are so many things which by their nature have this complexity that at a later point in the schemes for dealing with them, the judges come in and interpret/statutes you are using - and you have to have them, you need them, but this is it: do you want them deciding issues of urban renewal under the guise of "no expropriation of property without adequate compensation"? What is adequate when you are changing the whole property system?

DR. FORSEY: May I ask whether there was any indication of how the central government people felt about the kind of position that Saskatchewan appears to be taking up and that is contained, for example, in this first proposition we have before us here? Did they show some flexibility in the matter, or were they inclined to take an all-or-nothing position about their own draft charter?

MR. DICK: My reaction was that at our meetings it was all-or-nothing. They

did not exhibit any interest. We made a verbal presentation very much along the lines of our submissions here, but we did not at that point want to put them in written form, and it did not get any sort of interest or whatever from the federal group.

Then subsequent to that they introduced their propositionson fundamental rights which were not only a repudiation of what the other provinces like, what we had been discussing (there was no reflection of that), but went even further and sort of repudiated what had been said at the February 7th conference a year ago by Ontario. In other words, they went right back after the discussion to their original position of a completely entrenched Bill of Rights - and in fact going even further than it might, because it seemed that in their submission there were some of the things that were referred to in Mr. Trudeau's remarks of a year ago February but were not even included in the White Paper on the Charter of Human Rights. So I had the impression, Eugene, that they had gone back and back and back.

DR. FORSEY: Did they not show any awareness of some of the problems and difficulties that, for example, Professor Lederman has pointed out and the Professor from Saskatchewan (I forget his name) pointed out?

MR. STEVENSON: I would think the only place where the federal government has expressed some reservation about possible application is in the field of economic aids, and they have been rather careful to say that this is a subject which should perhaps be left out of an original charter, but I do not think there have been any other reservations about what they are seeking.

MR. DICK: And they started on that premise in their White Paper.

DEAN LEDERMAN: There is one very significant difference. This thing about property has got through to them. A year ago they simply quoted the Diefenbaker Bill of Rights and recommended special entrenchment, and that there should be full rights of enjoyment of property and no deprivation thereof except by due process of law, which means adequate compensation. They have separated the property clause from the rest of the due process clause, and they now say "No deprivation of property rights except according to law", and that is one heck of a difference.

DR. FORSEY: Very big difference.

DEAN LEDERMAN: So this point has gotten through.

MR. DICK: I think the due process concept is something that frightens all lawyers

in its application in general terms in this type of Bill; that this is one of the things that we are looking at, for instance, that we are going to have to avoid,

PROF. BRADY: It is a simple lesson that Canadians might learn from American experience, isn't it?

MR. DICK: Very graphically.

PROF. CREIGHTON: Not if you want to import the whole American system into the Canadian, you don't believe that.

DR. FORSEY: Well, is the question of entrenchment of language rights being considered more or less separately, or is it in the same bag?

MR. DICK: I think it is separately.

THE CHAIRMAN: Pretty well.

MR. DICK: We get the impression it is quite separate. The Official Languages Act and so on having been introduced, I think the federal government have split that from their Bill of Rights.

MR. GREATHED: It is still part of the Charter propositions.

DEAN LEDERMAN: I think that was a tactical error they made a year ago, in putting the two things together.

MR. STEVENSON: The federal government has said formally last month:

"Although the federal government
"included language rights in its
"publication of the proposed Canadian
"Charter of Human Rights, it is prepared
"to consider other means to provide
"such a guarantee."

DR. FORSEY: Prepared to what?

MR. STEVENSON: To consider other means
to provide such a guarantee.

PROF. CREIGHTON: In fact Bill C120
does that.

DR. FORSEY: No, it doesn't.

MR. STEVENSON: No, the other means
might be amendment to 133, this kind of thing.

DR. FORSEY: I am a little disappointed
learned
that apparently these/caveats they have heard,
produced so little effect upon them.

I am always inclined to take a middle
position on this thing and say there is a case
for entrenching certain things in all events,
but you have to look at it terribly carefully
and watch your drafting terribly carefully, to
be very sure to know what it is you are doing.

I should have thought that they
would show some signs of taking notice when
they get this kind of thing that you refer to
from Professor Schmeser . I gather from you
that they are like the deaf adder that stopped
their ears, and this I find a little disappointing.

THE CHAIRMAN: Yes, on this kind of thing, I think one of the things that impressed me in the discussion with the officials was that many, many of these practical points which were raised certainly fell on deaf ears. I think it is fair to say one is left with the impression that this was one subject which, as far as the federal officials were concerned, was not really debatable. I don't know whether this is because they were themselves deeply committed to it, or whether it is a reflection that the Prime Minister of Canada regards this matter (as we know he does) with a very serious and determined view,

I felt, for example, in watching the February conference, watching his face, that one could see, I thought, visible signs of disappointment when the subject came up and the questioning began. I thought that to be a very profound sense. So I think it is a pretty absolute doctrine as far as they are concerned.

DR. FORSEY: Among the Dominion people there, did you have any people from the Department of Justice or any lawyers of any standing or competence, or were you depending on Privy Council Office people?

THE CHAIRMAN: Are you suggesting they are mutually exclusive?

DR. FORSEY: Well, no, but I think this is a case where we want to have some very

good technical legal advice. I don't know who all are in the Privy Council Office, but I wonder whether they would necessarily be people with the specialised legal knowledge. I know something about some of these constitutional provisions, but in a thing like this I would not dare open my mouth except to say: "Listen very carefully to the good constitutional lawyers.

THE CHAIRMAN: Well, they have been advised on this. Now, I don't know how far these advisers are into the machinery of things, but presumably they are being advised by those present, John Baetz, Goldenberg, Strayer.

MR. GREATHED: And Maxwell.

THE CHAIRMAN: Maxwell, of course.

MR. DICK: This is the funny part, because when you mention the Privy Council Office and the Department of Justice, the Department of Justice had nothing to do with the Charter of Human Freedoms concept. That has come up entirely through channels outside the Department of Justice.

PROF. CREIGHTON: When was Mr. Goldenberg ever recognized as a great constitutional lawyer by any government?

MR. DICK: You should get Max Cohen going on that particular point. He was brought in as a special consultant on the constitution by the Prime Minister of Canada. John Baetz

in the same way is in that category of special counsel.

Professor Strayer, I think, has done all the drafting of the Charter of Human Freedoms. I think he did the proposition, and I think he is producing all the background material and the basis for this approach.

I get the distinct impression (and this is pure Rendell Dick), but I am convinced in my own mind that the Prime Minister of Canada is a republican at heart and that his concept is republican; that his Bill of Rights in its entire form as presented is one of the things closest to his heart, and he is not permitting his officials to make any change or abdication from what he originally proposed but is going to ride it as long as he can on that basis.

I think it is reflected in the proposition on the Senate, and I said that before, ^{see} that when you/a proposition for the reform of our Senate to a six-year term with the power of advice and consent for agencies, ambassadors, judges of the supreme court, etc.; so many little things, like the lack of the mention of the Throne and the Crown in the Throne Speech and so on: it is just my personal feeling, as the civil servants in this area know, I have a "thing" about this creeping repullicanism and I think that Pierre Trudeau is riding the Bill of Rights

in this form right down as far as he can go, in the hope he will get as much as possible.

PROF. CREIGHTON: You confirm my deepest suspicion. I know that is exactly what he is after.

DEAN LEDERMAN: Let me throw another thing in at this point. Constantly in federal documents -- and I am a federalist at heart, as I think everyone knows, in that I am in favour of a strong central government -- again and again in this document and in the one a year ago (and I am looking at the one issued this time) you get the proposition that the rights of people must come before the rights of government. This is a false dichotomy. In the modern world the rights of people are effectuated through the operations of government. If we do have a liberal, democratic state, this is a false dichotomy.

PROF. BRADY: This is 18th century.

PROF. FOX: It is the American concept; it is 18th century.

The example of Rendell's point is well taken. The major examples in his charter last year were all from the American context, all the illustrations.

MR. DICK: Even near the tainted evidence, he didn't mention that in his Charter; he

mentioned it in his comments when he was dealing with it as Minister of Justice. His orientation is all the American way, the American Bill of Rights and the effect that it has had upon civil rights in the United States.

DR. FORSEY: On the other hand, I must confess that every little while I read something by some common law lawyer (I think I have said this before here), some of the dissertations by some of these people at the Law Teachers Conference last June - notably one by some Alberta professor whose name escapes me; and I was frightened by their complacency, the smug assumption that all is for the best and the best of all possible common law worlds. It worries me a little bit. I think it is necessary to show a certain degree of open-mindedness on both ends of this thing, and I am a little disappointed to find that the central government people are not apparently doing their share.

It looks to me as if some of the provincial people have been saying: "All right, perhaps there is a case for a certain degree of entrenchment of certain things". I would hope that would be met by a tendency on the other side to say: "Well, possibly there is not quite such a strong case for some of these other things that have been talked about. Perhaps there are hidden dangers which we are indebted

to you for pointing out".

DEAN LEDERMAN: I think there is a tactical aspect to it too. Some of the Prime Minister's advisers (no names, no pack drill) who do not believe in this much rigid entrenchment, they would rather keep the top going on that and insist that it has to be talked about before the distribution of powers, because it is the last thing that we have to talk about, distribution of powers, and the longer they can put it off the better they like it. I have a certain amount of sympathy for that, I must say.

THE CHAIRMAN: It is a dangerous kind of fencing though, isn't it?

DEAN LEDERMAN: Yes, it is a bit dangerous.

DR. FORSEY: The foils may be tipped with poison.

THE CHAIRMAN: I have been given the impression that when the Charter first emerged over a year ago (and at that time the Prime Minister was Minister of Justice) I was given the impression that he had substantially written the document himself (an unusual practice for politicians, admittedly); but this is something which was almost a culmination of his own personal feelings and life experience. I think you have confirmed that, Eugene.

DR. FORSEY: I would suspect the same

thing. It sounded very much like Pierre.

MR. DICK: I am sure some of you have read before I ran across it, the little pocket book that came out, that compilation of Mr. Trudeau's "things". I wish Mr. Wishart in speaking in the Legislature on the constitutional debate had used it. I wanted him to read Pierre Trudeau 's speech as his own, because in some of his remarks that he has made he went exactly the way that Mr. Wishart has gone twice now, in getting up and saying: "Just before we leap off this bridge, let us look where we are going".

Mr. Trudeau in several of his articles has reviewed the problems inherent in it, the things you must look at, the differences that this is leading to. With a few word changes, it could have been just like material which was prepared for Mr. Robarts and Mr. Wishart in this area. As a tactical thing, I would have just loved to have him read it, let the Opposition attack him, then produce the book and say: "Well, buster, you read it. That is what your leader has been saying for years." But Mr. Wishart is an honest man, and he won't play it in that way.

THE CHAIRMAN: Unlike his adviser!

(Laughter)

MR. STEVENSON: We found Mr. Robarts was honest too, because we had much the same discussion about the limitation of spending power.

THE CHAIRMAN: It would be lovely, I think, to have him quote long passages in his opening speech and note the author.

PROF. CREIGHTON: From ----

THE CHAIRMAN: Mr. Trudeau's book.

MR. PERRY: There is the possibility of some other politician doing the same thing to him.

DEAN LEDERMAN: There was an article in the McGill Law Journal about five years ago by Pierre Trudeau, in which he definitely says that economic and social rights should have priority. I will have it photo-printed and send it to you. It just shows that professors need a statute of limitations on what they say.

MR. DICK: They learn a lot over the years.

Does this Committee have any feelings on this sort of general proposition that is inherent in some of ours, that there is a reason for looking at a Bill of Rights or entrenched Bill of Rights in this well defined and rather limited area?

PROF. FOX: You mean you are asking for our reaction?

MR. DICK: Yes.

PROF. CREIGHTON: I have already said I was opposed.

PROF. FOX: I was very impressed by Mr. Wishart's speech at the conference. I thought it marked quite a notable change from the Ontario

Government's position a year ago. I was very favourably impressed, and I thought it was an excellent presentation. The way he broke it down, explained what was being done by other agencies like the Human Rights Commission, I thought it was a very persuasive argument. If you ask for a personal opinion, I thought it was very good - just about right. It was a compromise, a very sensible one.

DR. FORSEY: About this proposition which we have here, this first one is quite reasonable. I don't know that I would want to be held to every word of it. I understand it is being put forward as a proposition, and it is possible you might be persuaded to add something to it or take something away from it as the result of discussion. To my mind this is what discussion is for, and it is why I am disappointed the central government people are being stiff, from what you say.

DEAN LEDERMAN: I think they put every proposition through Cabinet and the officials go bound by the propositions, don't they? That is what is happening.

THE CHAIRMAN: Do you nurse any fears about these creeping practices, Eugene?

DR. FORSEY: I don't worry too much about these abstract ideas. I want to know whether there is a solid reason for putting in this kind of thing.

If somebody says to me: "You have got that in the American constitution" I am not prepared to say that that necessarily condemns it. Just as for years I have had people saying to me: "That is very left" or "That is very right". I am not terribly interested, of course, so long as it is sensible. Then I am prepared to vote for it. Then they say: "Surely you know the Communists say that too". I cannot help that. Communists, presumably, sometimes take baths, but I am not going to stop taking baths because the Communists take baths. Or somebody says: "You are a Protestant, and the Pope says that", to which I will say: "I am delighted to find the Pope agreeing with me. I still think it is sensible". I am not prepared to say I will accept everything the Pope says, but certainly I am not worried about an abstract thing, if you went all down the line and combined it with other things.

I think the Senate stuff is just awful, whether it is from the American constitution or it is not; it is still awful, it is bad.

DEAN LEDERMAN: It is everything bad in the American constitution, nothing good.

THE CHAIRMAN: What do others on the Committee feel? Are there other strong views one way or the other.

PROF. BRADY: I think the Ontario position that Mr. Wishart expressed in February is

a very sensible one. I think entrenching these political rights was inherent in our constitution anyway, but it not only does not do any harm, but may do some good, to have them expressed and entrenched. There is no movement beyond

political rights, and I think that is wise because I think anything like the entrenchment of social, economic rights involves really a redistribution of power, could ultimately. You do not know what effects it would have actually at any moment upon the distribution of powers. If we are concerned with the federal system, I think it is imperative for us not to have this.

In any case, the argument of Mr. Wishart, I think, is absolutely unanswerable, that when you are dealing with any rights in this area, it is far more effective to get them protected in statutes with administrative mechanisms that will appropriately and effectively enforce them. To do otherwise is just spending paper and perhaps creating a great deal of trouble in administration and law-making in future.

I think it is an excellent position for ONtario to take, and it is consonant with what I would imagine to be Mr. Robarts' general attitude towards the constitution.

DR. FORSEY: One thing in this proposition here that would need, I think, a certain

amount of careful drafting, is the freedom of association; because you could get it put in such form that you would run headlong into a terrible hullabaloo with the whole trade union movement. Perhaps this is what you do want to run into; perhaps it is necessary.

PROF. CREIGHTON: I am doubtful about that.

DR. FORSEY: But do it knowing what you are doing. Don't walk into the hornets' nest thinking it is just a nice little bit of paper hanging from the roof.

I looked, for example, at Judge O'Hearn's "Peace, Order and Good Government" and some of the abstract rights he put down under the heading of the right to work and freedom of association and what not, were wide open to the wildest kinds of difficulties. You just have to watch. If it is necessary to do something that will run headlong into trouble there, all right, but make sure you know what you are doing.

PROF. CONWAY: I do not quite follow, Dr. Forsey. How would that affect trade unions?

DR. FORSEY: You see, there is such a thing as a union having exclusive bargaining rights, and the other union coming along -- the whole business in Quebec of the C.N.T.U. people and the C.N.C. people. There are all

kinds of things. There will be in Quebec at an argument least/about pluralistic syndicalism and pluralistic trade unionism. It just needs very carefully looking into.

DEAN LEDERMAN: I would not mind if the suggestion were that, of course, you have a short, succinct general statement - "great text of the Bible" sort of thing of what these rights are; but then you must also indicate, as Mr. Wishart made clear, that none of these rights are unlimited, and you have to indicate that in general terms.

I think also you have to do a third thing: you have to say explicitly that there is a legislative power in the appropriate Parliament under the distribution of powers, to enact implementing, supporting legislation; and it is not just a matter of that proposition and what the Courts do.

I think those two things have to follow, and I would be inclined to go further and write a presumption that the legislative judgment about what protects and supports, that there is a presumption in favour of its validity, and that the Courts should only strike a balance between the two. But those are purely drafting suggestions

PROF. CREIGHTON: The means are very

complicated and difficult task as well . Every-
thing you said just reinforces my opinion that
it is not necessary at all.

DEAN LEDERMAN: You could do this in
three or four pages.

PROF. CREIGHTON: Well, three or four
pages is rather unnecessary.

DEAN LEDERMAN: For these four or five
things.

THE CHAIRMAN: Looking back at that
conference in general, do the members of the
Committee feel that things moved forward,
stayed still, moved backwards, generally speaking,
to the extent that you observed the conference
and its outcome?

PROF. FOX: I have one thing, Ian,
I would be interested in trying on the members
to see whether or not they agree with me.

My appreciation of the western position
was this, and I was quite struck by this: that
in the intervening year between the two conferences
they had really advanced their examination of
their thinking about the constitution considerably.
I don't know how much research they had done,
but had certainly begun to think seriously about
these things.

In some notable instances, they had
advanced their thinking considerably about linguistic

rights, for instance. There was a marked change there, and they were quite concerned to explain what they were doing in their schools and so on for French-speaking Canadians.

At the same time there was a curious, increasing emphasis also on their own identity as westerners and their distinctiveness, and almost (I hesitate to use the word) an element of separatism.

I was struck by that in the emphasis in the speech by the Premier of Alberta, for instance. It was a clever piece, the way he began by saying "Yes, French-speaking Canadians have had grievances" and so on -- which was, after all, a marked difference from the point of view Mr. Manning had taken. Then he turned this around very neatly and said: "But we have our grievances" and he put himself in the position of the French-speaking Canadians on the basis of economic grievances. I was quite struck by that presentation.

I thought there was also an element of that in the B.C. position, in that Mr. Bennett's brief -- I won't say it was the best brief he ever presented, but it is the only brief I have ever seen that he presented.

THE CHAIRMAN: Jolly green giant!

PROF. FOX: Things were spelled out, but also his line had hardened a bit on his own

demands. I don't know whether that is the appreciation other people make.

MR. PERRY: I had just the opposite feeling. I thought Bennett had made some (for him) very incredible concessions.

THE CHAIRMAN: In what respect?

MR. PERRY: Well, simply being in a rather reasonable frame of mind for once. He is usually clowning about everything. Several times it seemed to me that not in a very specific way but emotionally he was supporting the federal position.

DEAN LEDERMAN: I agree with Harvey about that.

MR. PERRY: At least, supporting a unity of view rather than a fragmented view, which is quite astonishing for Bennett.

PROF. CONWAY: I agree with Paul, Mr. Chairman, and I cite Bruce Hutchison's editorial in the Vancouver Sun in support of that. He is certainly a very respected student of Canadian affairs, and his reaction was that the main impression he got from the conference was regionalism, and that the conference to him seemed to be about Ontario and Quebec mainly. from their point of view. Those of you who read that editorial remember that he warned the east that there is going to be a reaction in the

west because of this. To me this was clear all through the conference.

MR. PERRY: The western position is emerging as quite a distinctive one. I suspect that wet wheat and a few other disagreeable things have something to do with it.

THE CHAIRMAN: I wonder if both of these extreme positions are not in a sense true. I felt at once that the western premiers in part were anxious to demonstrate that they were not alien to all of the ideas that were being discussed, but at the same time were pointing out how very difficult it was to be fully sympathetic for the very reason of the feelings that they felt are building up behind them among the people of the west. It seems to be becoming a very profound thing.

As you say, Paul, many times my thoughts went back to all my readings about western political splinter parties and this and that, All the earlier feelings which one felt - general affluence and transcontinentalism of the twenty-four years since the war have begun to shake down a bit.

The feeling I took out of it was that it is true that Bennett in part, and I think Stewart from Saskatchewan in particular, were seeking to make accommodations with the national

purpose, but at the same time warning how very difficult it was to do that because of the political situation emergent in the west.

DEAN LEDERMAN: Basically that is what Mr. Manning did, both at the Confederation of Tomorrow Conference and the federal conference a year ago. He warned about the methodology on linguistic rights and so on, and nobody in Ottawa listened. Now Mr. Manning is gone, but these factors are coming through anyway, and he was interpreting them correctly.

PROF. CONWAY: It was stated in the Globe and Mail recently that one of the western provinces had made a feasibility study of separatism. Do you know if that is true and, if so, what province was suspected?

THE CHAIRMAN: I don't know the answer to any of those questions. Do you know, Don? Have you heard any rumblings?

MR. STEVENSON: No, just that supposedly there is an association for western Canadian separatism, I think started up in Edmonton.

THE CHAIRMAN: Calgary, wasn't it?

MR. STEVENSON: Or Calgary.

FATHER MATTE: There is a group in Vancouver still, isn't there?

MR. STEVENSON: Yes, but I have not seen any evidence that it has very much research behind it.

FATHER MATTE: No, I don't think so.

PROF. CONWAY: Did you see this in the Globe & Mail?

MR. STEVENSON: Yes, I think I did.

MR. PERRY: The degree of progress towards integration here is that twenty-five years ago each province used to be separatist in its views. Now at least we have this consolidated to regional views about separatism. I think the next step is that everybody has the same view.

PROF. FOX: Is that right actually?

MR. PERRY: Oh, heavens, yes.

THE CHAIRMAN: Twenty-five years ago?

MR. PERRY: Yes.

THE CHAIRMAN: You feel provincial views were more strongly provincial then?

MR. PERRY: Quite definitely. You got very little common view about Western Canada except on a thing like the tariff, which is a sacred trust.

PROF. BRADY: I think this discussion emphasizes the old Canadian problem, and it seems to me as long as I can remember it has been a problem. You get separatist sentiments expressed in the west, sometimes in the east.

MR. DICK: We get them expressed in Northern Ontario.

MR. PERRY: It would be a very dull place.

DEAN LEDERMAN: At the Diamond Jubilee of Confederation, public buildings in Halifax were draped in black.

MR. PERRY: During the twenties they had mob riots in Halifax because they were so strongly separatist.

DR. FORSEY: The Liberal candidate in Picton County in the general election of 1936 accepted the Liberal nomination only on condition that he was allowed to advocate secession for Nova Scotia. He always flew the Nova Scotia flag at half-mast on Dominion Day, and pulled down his blinds and put crepe on his door.

MR. PERRY: A Canadian characteristic of doing something unconditionally pretending to be doing something else!

PROF. FOX: Isn't it curious that you get an appreciation of, say, problems in other regions? People recognize the force of the argument of economic disparities and the force of argument for special considerations for French-speaking Canadians and so on; and yet at the same time there is this accentuation of regionalism. It would seem to me that one would think that the two might logically work together to modify regionalism. Instead, both seem to be accentuated.

MR. PERRY: I don't know what westerners have as a long-range objective. I would think

that if their view is of joining up with the United States, for example, that it would not be more than a year until they were directing the same sort of complaints against the large eastern interests in the United States. We are not alone in having separatism, this regional sort of view.

DEAN LEDERMAN: There is a higher intensity to all these things.

PROF. FOX: Yes, there is.

DEAN LEDERMAN: But the fundamental factors are still there, and just what the higher intensity is going to do is hard to see.

What the mass media of communication are doing with this, I think unless our mass media of communication become more sophisticated this in itself is one of the greatest dangers to confederation.

MR. GREATHED: By "higher intensity" do you mean as a result of the constitutional review? Do you mean that that is a factor?

DEAN LEDERMAN: No, I mean in a Marshall McLuhan sense, I suppose - the global village; that we all know a lot more about one another in different parts of the country and we know it right away.

PROF. FOX: It seems to destroy the hypothesis that an increase in education will reduce animosity amongst people. If anything, it

accentuates the degree to which one will stick to his own position and insist on his own rights.

PROF. CREIGHTON: You get to know and hate each other. (Laughter)

PROF. FOX: I find it a little disturbing really.

MR. PERRY: Not adopting that getting to know one another we will automatically love one another.

THE CHAIRMAN: Not releasing the finer motives and instincts.

PROF. FOX: Intellectual comprehension does not reduce your own desires and your own opinion.

DEAN LEDERMAN: On the other hand, getting to know can have the beneficial effect. This is a far more tolerant country than it was thirty years ago.

THE CHAIRMAN: I would think so.

DEAN LEDERMAN: In all its parts.

PROF. MEISEL: I think this is one of the virtues of this conference. Before the conference opened I was afraid it was really going to be a disaster. I thought in the end that one of the things that the conference did was to present points of view which are clearly genuinely held by responsible people in various regions, in a way that did not arouse a total revulsion in the other regions. As a process of

informing Canada of what it is like, I think it was a very useful conference.

MR. PERRY: This was my own impression. The reasonableness of the tone of all the discussion was what impressed me. People were saying rather harsh things, but there was no sharp reaction to them; they were quite often saying it with a smile on their faces.

PROF. MEISEL: Better they become articulated so that the others have to listen, whether they like it or not. They are offsetting --

THE CHAIRMAN: I don't think any irresponsible men become premiers of provinces or prime ministers of this country. I think this is what happens when they get together in a room, and that it is bound to happen, that they are being sensible and reasonable.

DEAN LEDERMAN: I think it was a "Yes, but ..." conference instead of a "No, unless ..." conference, and that is a much better atmosphere. There is a big plus out of this conference, but it is intangible.

MR. STEVENSON: I wondered if some of the members shared the feeling that evidently the Quebec people are increasingly having, that is, that because the conference very obviously shied away from any substantive discussion of the distribution of powers at this point, even though the mechanism

was established by later discussion, that there is a feeling in Quebec that the rest of the country which is really procrastinating on this issue, /is leading them into the feeling: "We had better put a time limit on it, a year or two years", this kind of thing.

I had a feeling from some of the Quebeckers that they came out of it a little more pessimistic than they had gone in, perhaps because they had put their hopes too high.

DR. FORSEY: I think this is a very cheerful note to have struck; because the kind of thing that they want done in the way of re-distribution of powers generally seems to be, to say the least of it, mischievous; that if they are feeling disappointed about the progress that has been made in their direction, it is all to the good. I am delighted to hear this. The less satisfied Mr. Claude Morin, for example, the less happy **he** feels about the outcome of this conference, the better I shall be pleased - or any other conference, I might add.

PROF. CONWAY: Of course, someone as reasonable as Claude Ryan was disappointed in the outcome of the conference.

DR. FORSEY: I take leave to doubt whether Claude Ryan deserves that adjective. He was once a fairly reasonable man, I thought, but he seems to have become more and more infected

by the psychological epidemic which is waging in certain quarters of Quebec. I think he has become less and less reasonable, and I think he has shown himself more and more frightened.

THE CHAIRMAN: However, whether the spokesmen of Quebec are right or wrong, I think there is a point that the representatives of the other provinces may be tempted to measure the success of the process by saying: "Well, it is awfully nice we are still talking to one another"; whereas I think the representatives of Quebec are seeking evidence of specific decisions, settlements and what have you, whether they are right or wrong.

So in that sense it is a political problem for Canada, presumably, as to how they are going to react and how they are going to move.

DR. FORSEY: It is a problem undoubtedly. If they are disappointed in the speed with which the thing is taking place, part of it is their own fault, because they whooped it up for a completely new constitution. If they had started by saying "We want certain specific changes. Come along and discuss these", they would be in a much stronger tactical position to complain of the slowness of the progress. If they want the whole thing "complet" as it were, then you can't very well say: "Why don't you get down to immediate issues and brass tacks and specific

changes "No, we want this thing taken in the largest possible sense, embracing mankind from China to Peru and off into the stratosphere". You can't expect all that to be done overnight.

DEAN LEDERMAN: I think this Quebec Government, this group of civil servants and any representatives of Quebec at the present time, are in a distressful situation, Eugene.

Is it not true that the situation in the Province of Quebec, both politically and economically, has deteriorated in the last year or two? This puts on a great deal more pressure - the prospect of too much unemployment and the spread of outright separatist sentiment among critical elements of the population.

Would I be right to think that all these things are at a more serious level than they were a year ago?

MR. PERRY: They are accentuated by an extremely serious financial position of the provincial government. They are about at the end of everything; their taxing power is just about exhausted, their borrowing power is very nearly exhausted. People who know their situation well are quite seriously concerned.

DR. FORSEY: This again is partly their own fault. If you yell enough, you scare investors away in the climate of uncertainty and that kind of thing. They have dug a pit for

themselves and now they are falling into it.

PROF. CONWAY: But they need help.

PROF. MEISEL: Certainly I think Mr. Lederman is quite right. I think politically the situation has worsened as much as it has economically in many respects: both in terms that there now is a much more promising (in its own terms) political organization that has this power of separatism; and it also appears that the kinds of ideas that independist groups are espousing are being adopted by not only students and young people but there seems to be a rise of that kind of sentiment among middle-aged people,

The reports from the Estates General are very interesting in this respect - not that I think the Estates General represent all of Quebec opinion by any means; but it was the middle-aged people who were just as much involved in extreme and very parochial solutions, as the young people used to be.

I think there is a general spreading of this kind of sentiment, which certainly any Premier of Quebec has to take into account when he goes to Ottawa to negotiate.

PROF. BRADY: I think the dissatisfaction on the part of some of the French-Canadian officials comes out of the factors that have just been mentioned by various people; but, of course, it also comes out of the simple fact that the conference

did not come to some of the "gut" questions of confederation to-day.

There was no particular response on the federal government's part, except to provide - and perhaps there could not be any other response - a procedural apparatus for examining and treating these "gut" questions.

In other words, we also have to agree that the distribution of powers is a crucial matter, including, of course, the financial powers, and the sooner we get to them the better.

Well, we shall get to them; we are going to get to them, I think, now through this procedural scheme that came out at the conference. One up-shot, surely, of the conference was not anything in the substantive way but simply procedural. It provided for how the really crucial problems of confederation are going to be tackled by a series of committees.

There is no reason to be dissatisfied with the conference, because what it accomplished had to be accomplished, and it could not accomplish much more under the circumstances.

The issue that confronts us is utilizing now the new machinery, as it were, to get a realistic attack on the problems, which I see as distribution of powers and finance

PROF. MEISEL: The conference cannot do anything else anyway, can it?

THE CHAIRMAN: No.

PROF. MEISEL: It can ratify agreements that have been worked out earlier, and it can set the limits within which some of these agreements can be reached.

THE CHAIRMAN: I would like to suggest then that perhaps we might conclude this item and take a five minute break to stretch our legs and have coffee.

-----Short recess.

THE CHAIRMAN: I wonder if we might come to item 3 - discussion of the second volume of background papers and reports. We have accumulated quite a bit of material since our first volume, both in study papers done for the Committee and in papers done within this Committee.

Accordingly, as agreed at an earlier meeting, I wrote to all those who had done such work and asked for both their views on the volume and also their permission to include their work in its original or revised form.

Ed, you may have some report on the status of that volume and the thinking of the staff in terms of its production.

MR. GREATHED: Mr. Chairman, I might just say that the second list which was sent around with the Chairman's letter to members, and which listed ten authors and articles, is the one that

we are working from. I think I have been in touch with or heard from most of the people on that list one way or the other, about their interest in having their article included in this particular volume.

I might say that I think the only one on that list which will definitely not be included, because it is to be published elsewhere shortly, is the essay by Professor Conway, on which he wrote to the Chairman and stated that as it would be published he would rather it not appear in this particular volume.

THE CHAIRMAN: I might add it will be a source of profound disappointment to certain Members of the Legislature, talking of your work.
(Laughter)

PROF. FOX: Have to explain there was no plot.

MR. GREATHED: We went through that rather thoroughly in the Legislature during our estimates.

PROF. CONWAY: So I hear.

MR. GREATHED: However, I think a number of individuals have suggested different articles that they would like to use, and I hope in due course - in fact very shortly - to get out a revised list.

Thanks to a suggestion from one of the members of the Committee, we have managed to

persuade your Chairman to venture into somewhat deeper waters than one normally gets into in writing forewords.

THE CHAIRMAN: I hope not more treacherous. (Laughter)

MR. GREATHED: He will be contributing a piece on this. Also the members of the distribution of powers task force have received in recent weeks two papers that we had done for us last year by Professor Atke of the University of Western Ontario Law School: One on the Provinces and International Relations, and the second one on Broadcasting and Communications. Now, when the task force has had a chance to read these papers and comment on them, and perhaps have a meeting to discuss them, then we can consider their possible inclusion in this volume.

I think basically the papers are very sound pieces of research, but I would like to get comments from members before -----

DR. FORSEY: I can tell you now I have read the one on international relations (I have only glanced at the other one) and I am not in the least impressed. I think in some parts it is exceedingly incompetent, and in its general trend it is entirely mischievous, to use a very moderate adjective. I am submitting to you my own views in writing in some detail.

MR. GREATHED: That is exactly what we want.

DR. FORSEY: But I warn you now that I just don't think it will do at all.

MR. GREATHED: I think, Mr. Chairman, I would just like to sound out this Committee in terms of the format of this second volume.

I think our intention was basically to have the second volume appear in much the same form as the first. If members have other views on this, I shall be very glad to have them now or later.

PROF. FOX: Could I just ask about how you handle this? Do you sell this volume?

MR. GREATHED: We began by issuing it strictly on a complimentary basis, and then we looked at a lot of publications that we were putting out and we decided to attach a price to them, as you saw on that brochure. So it has gone on a sale basis too. I have not complete figures for the sales on that.

PROF. CREIGHTON: Would you like to give us a guess as to what the sale has been?

MR. GREATHED: Well, it has been in the neighbourhood of three hundred copies since that brochure was sent out.

PROF. CREIGHTON: That does not include the free copies that were circulated before?

MR. GREATHED: No, I think the difficulty here has largely been that we are not really very well organized here on the distribution end of things.

I think at some point we might have to consider putting this problem in the hands of a commercial publisher. They are much better equipped to get volumes to people.

PROF. CONWAY: How many complimentary copies went out roughly?

MR. GREATHED: The last figure I have is in the neighbourhood of a couple of hundred.

PROF. CONWAY: Go to all universities?

MR. GREATHED: It went to universities, governments, and various people who requested them, on various lists that we have; so that it has not been a staggeringly large distribution.

I think we will have to look at some of the problems we have had here, and try to make sure that the second volume is more widely distributed.

One of the things, of course, was, as members will recall, that the first volume came out in a soft-cover edition first, and maybe a lot of the impact was lost because of this. That was certainly fairly wide, although I do not have figures on that.

PROF. BRADY: I have one suggestion. You don't wish to dwell much on this, because there is a lot to be discussed, and I make this suggestion hesitantly because I have not given much thought to it. I think in producing the volume it would be wise to group these essays somehow under some

general headings. In other words, rather than, say, have twenty-one subject matter chapters being very different, they should be grouped in some fashion. I think that would be desirable.

Also I notice that this paper of mine is listed th ere. I did not notice th at before. What deadline are you thinking of?

MR. GREATHED: I think, as the Chairman said in his letter, we would like to aim for publication some time this summer. Therefore, I think, getting in touch with publishers and so on (and we may be a little optimistic here) I would like to have copy in the publisher's hands not really much later than the end of May.

I might just say, on that point, that in my preliminary look - and I stress it has been just a preliminary look - at some of the manuscripts that we are suggesting, it may be that some editorial work has to be done to them, maybe in some cases to shorten them somewhat; but I want to assure any of the people concerned that they will see any editorial work that is done before the galley proofs are issued.

PROF. FOX: Can I suggest, in the words of R. McGregor Dawson, that you do not miss the Christmas book sales.

MR. DICK: Paul, I could not help but comment to the Chairman on my experience with the McRuer Report. When it was free it went in

twelve directions at once, but as soon as they charged six dollars for the set of three, the market dried up. You are way ahead of us on points, because the free list was two hundred and you have sold three hundred. That to my mind is a tremendous compliment to the authors. Sure beats the success we have had.

THE CHAIRMAN: If anyone wishes to decorate their walls with copies of the Ontario Committee on Taxation report, we can offer you a few of those.

PROF. BRADY: It would be very advantageous - there is no article on distribution of powers.

MR. GREATHED: No, there isn't.

PROF. BRADY: It would be advantageous to have something on that. Whether the Committee might be interested -----

PROF. CREIGHTON: It would not. Individuals might, but not the Committee.

THE CHAIRMAN: Do those of you who are teaching, or among your colleagues, do you hear any interest in the use of this book, as I have from time to time from people?

PROF. BRADY: Yes.

FATHER MATTE: People, I would say, are curious about it; they want to know what it is about.

PROF. MEISEL: It is used by one of our people.

THE CHAIRMAN: Is it?

PROF. FOX: Yes, I think the interest is considerable, but, as Rendell says, it is even more considerable if it is free.

MR. GREATHED: We have had an internal discussion about this matter of distributing things free vs. selling them. I must say I have been an advocate of selling things. As a taxpayer I have been an advocate of that.

PROF. FOX: You will always get a library sale that will redeem some of your costs.

FATHER MATTE: Mr. Chairman, with Professor Brady, I regret there is nothing on the distribution of powers. That is the crux of the matter. That is the logical approach to sharing costs, sharing taxation.

MR. GREATHED: Of course, the articles we have to draw on were those the Committee has worked on or produced in one form or another in the last two years.

FATHER MATTE: You have nothing on that subject matter, nothing worthwhile.

MR. GREATHED: No.

MR. PERRY: I wonder if this is something the Chairman might cover in his foreword? I have had some people suggest to me that their reading of these documents meant that these were the only subjects that had been considered by the Committee, and that those people who had not

written anything were lazy loafers, making no intellectual contribution whatever; rather than the fact that a good bit of our most productive effort has been in such days as to-day, when we have been sitting around this table discussing a good many subjects on which no written document has been produced.

DR. FORSEY: Perhaps the Chairman might put in his foreword something to the effect that these papers are merely the froth on the beer.
-----Laughter.

THE CHAIRMAN: I will put that in an early draft.

MR. DICK: That is what Oxford did for you.

THE CHAIRMAN: Bitter.

MR. GATHERCOLE: I was going to say, Ian, that my experience is that in the matter of whether you attach a price to a volume that you wish to sell or distribute, or whether you do not, that decision should be made at the outset before you order the number of copies.

THE CHAIRMAN: Yes.

MR. GATHERCOLE: Because once you have ordered the number of copies, you are committed to a policy upon issuing free copies. As Rendell says, when you attach even any price to it, then the demand vanishes quite rapidly. For that reason, I think you have to determine right at the

beginning whether you are going to attach a price and then order accordingly.

Otherwise you may wind up, having later on attached a price, with a lot of unused copies. This can happen. I suppose there are vaults around where there are enormous numbers of copies. It is very embarrassing to find yourself throwing these copies away, their timeliness having disappeared when they could have been of some use.

For that reason I sometimes question whether it looks like good policy. Certainly in my days around the Buildings we used to try to attach a price, to try and ration demand. On the other hand, you sometimes question it, because then you deprive people who may really be interested in the contents of your publication. So for the amount of revenue you get out of it and the bookkeeping attached to it and all the rest of it, I sometimes question whether it is prudent and wise to attach a price to this type of document.

MR. GREATHED: I think, as Mr. Gathercole knows, we have for so long lacked real expertise in the government on these matters.

For this reason, I think I would like to turn perhaps to a commercial publisher and get some of their views on this matter, because they are the people who are best judges of these things.

MR. DICK: If I might, Mr. Chairman, following what George said and my remarks, Paul

mentioned earlier about the problem of more people hearing some of these things and seeing some of these things for a greater understanding.

I am all for collecting revenue and we want to have a reasonable demand and not an unreasonable wastage, but this is the type of material going out that would convey to many people who might read it at least an understanding of the type of problems with which governments are faced.

If I were given a choice, I might charge for everything else the government sends out, but if we are giving anything away it would be this type of material which is directed towards having a wider public understanding of the problems that governments have in dealing with these constitutional difficulties.

PROF. BRADY: On the other hand, I think when you charge something for a publication, more importance seems to be attached to it by the public. A modest price, in other words, I would think, is desirable for anything you turn out. It suggests, as it were, that this is at least worth something, whereas a freely issued document does not seem often to be taken as seriously. This is the impression one gets.

PROF. CONWAY: A heavily subsidised price is still a price.

MR. PERRY: A modest price gets to the stage in which the cost accountants could tell you

you are losing money and it is cheaper simply to mail the thing out.

MR. DICK: I would have a real horror, for instance, if high school teachers in Grade 13 wanted to get a whole flock of these things for their purposes and they were discouraged from doing so because there was going to be a dollar and a half or two dollar tag attached to every copy. I could see charging for selling it through the Queen's Printer and discouraging people from picking up everything that is free, but to get wider dissemination to people who might make use of it, I would minimize the cost.

MR. GREATHED: I find the discussion very interesting.

MR. STEVENSON: I am glad you are getting this education.

MR. GREATHED: I have certainly changed my view. We have had quite a discussion about it here. Frankly, I think our problem is less price than facilities to distribute properly.

THE CHAIRMAN: On that point, there are plans afoot and have been for some time, which I hope will come to fruition^{soon} to appoint a Queen's publisher and to have a Government of Ontario bookstore. This would help greatly the whole distribution process, but it may not be there soon enough to help us.

PROF. CREIGHTON: I hope it is organized

and does its work better than the Queen's Printer in Ottawa.

MR. GATHERCOLE: One way over this difficulty of distributing copies needlessly, which involves postage and so on, is to send out a little card to them when this publication is available, saying: "Do you want one?"; and if somebody is not prepared to send back the card, to get it, then don't send it out. Postage is increasingly expensive, and also packaging, etc. can add to the cost.

I think myself this is a complicated matter and takes a lot of study. I think frequently you go to a great deal of difficulty and work to establish a system of attaching a price, when in the end the revenue you derive from it is so small that you wonder whether the exercise is worthwhile.

THE CHAIRMAN: I think this discussion has been very helpful. If there are any other particular points that occur to you, you might be good enough to send them along to Mr. Greathed, and we will take them into account.

PROF. CREIGHTON: Mr. Chairman, may I enquire whether this No. 3 which we have been discussing is really related to No. 6? The question was raised whether there ought to be some kind of contribution on the division of powers. There is none at the present time. There never

would be one from the Committee as a whole because disagreements are too fundamental, but there might be some from individuals or groups, I suppose.

Do you want to discuss this now, or is it logically connected, No. 6 with No. 3?

THE CHAIRMAN: Perhaps we might do it this way. We might leave item 3 now, but pick up the question of the distribution of powers work in the discussion of our future program. If as a result of that discussion it appears that something might be forthcoming, we could readily consider its addition to the book in the same discussion.

Could we go on to item 4? We had quite a bit of reference to that item in our earlier discussion this morning. I don't know if there are other things which should be reported upon or discussed here, in terms of the committee work of officials and the secretariat in Ottawa.

MR. GREATHED: Perhaps, Mr. Chairman, I could report very briefly on that meeting which we had on Wednesday with Mr. Gallant, who came up to see us about some of the problems as he saw them.

I think essentially the chief problem that faces the Continuing Committee of Officials and its ministerial committees and so on, is how to cope with the new demands that have been

placed on that Committee. I think that the Committee's meeting in mid-April will really work out a number of things. What Mr. Gallant was hoping was that in the first place a schedule of dates could be set out for the next year or so, in which we could determine well in advance the kind of commitments we have to meet.

I think, as the Chairman was explaining earlier, this morning, the very complicated committee structure we have now and the tremendous demands that are imposed on ministers and so on, mean that we really do have to have a very carefully planned schedule of meeting times.

Secondly, I think there has to be some discussion of the kinds of procedures, kinds of ways in which the ministerial committees and the committees of officials will approach their various tasks.

I think we had a format which we used last year quite successfully, the proposition method. It may be, because of the instructions of the conference that the work proceed at an accelerated pace, that we shall have to change that procedure somewhat, but that certainly will be up for discussion.

Thirdly, I think Mr. Gallant is hoping very much that, given the fact (as the Chairman referred to earlier) that the First Ministers hope to have an informal session in mid-June,

there will have to be at our first meeting next month an early determination of priorities and a very quick agreement as to exactly what will be submitted and what will hopefully be discussed -by the First Ministers in mid-June.

It may be quite impossible, because of the available resources, to have all these committees proceeding together. It may be that we will have to say that on one subject all governments feel this subject is the one that must be discussed right away, and that this subject can be reserved for later discussion.

Finally, I think there will be at the meeting next month - and our propositions that you have in front of you in draft form are partly designed for this - a fairly thorough initial discussion of the use of the federal spending~~power~~ and how best to employ it without creating a number of the problems that have come up in recent years in federal-provincial relations.

Also, I am sure there will be a discussion of the question of the taxing power.

I think it is going to be a pretty full agenda for next month. I think that probably gives you an idea of the kinds of concerns that Mr. Gallant has and the kinds of problems that will have to be worked out.

I think I can say that we generally share this approach to trying to work out these problems of the Continuing Committee.

THE CHAIRMAN: Are there any other queries or matters to raise then?

I might just add that one of the consequences, of course, of the accelerating and deepening work load is the effect it is having on the secretariat in Ottawa, who are beginning to need more resources in terms of staff and facilities; and they are very anxious to draw in by secondment officials from provincial governments so that they are not staffed entirely by federal officials; but it is becoming quite a big organization in itself, and Mr. Dick and I can assure you that it has perhaps broken all previous bureaucratic records for the distribution of paper.

MR. DICK: And the production of it. I don't mind them producing it, but I wish they would not distribute it. (Laughter)

DEAN LEDERMAN: If our forests just hold out, we may get the constitution fixed yet.

DR. FORSEY: Perhaps you feel as I do, Mr. Dick, when I am asked to join any organization (I mean, worthwhile one): I say "On one condition, that absolutely nothing is sent to me."

PROF. MEISEL: I hope you don't apply that to this body!

DR. FORSEY: No.

THE CHAIRMAN: We do pretty well in the paper department ourselves.

MR. DICK: You are modest.

THE CHAIRMAN: With your permission, I would like to go on to item 6. Then when we have concluded that we can go into Committee of the Whole and get down to the work on the draft propositions to take us into the afternoon.

Item 6 is: "The composition, structure, functions and future work of the Advisory Committee." You will recall that when we met during the week preceding the February conference with the Prime Minister, that he expressed, I think, two points of view, two items. One, of course, was that he continued to be very appreciative of the work of this Committee and wanted it to continue; and perhaps the more so now that we are faced with the demands of formulating explicit positions on explicit subjects. He also said, as a second point, that he thought perhaps the Committee should discuss within itself some ideas about its future composition, structure, relationship to the government and so on.

This is perhaps straw that we have been through many, many times, directly or indirectly, in this Committee, and I would not want to make a profession/in the discussion of it this morning, of it but I think perhaps it might be timely and proper, in terms of his request, to have some consideration of it this morning.

Briefly, as you know, we began with eighteen members. We lost one to the judiciary.

We lost Mr. Magone, who felt unable to continue for personal reasons. We lost Dean Dillon who found himself faced with an increasing number of responsibilities in his university and private life. Then this year Craig McIvor has been on leave in London and on leave from this Committee, and will return to us, of course, in the next academic year.

Now, I gather from something one other member of the Committee mentioned to me the other day, that he might be on leave next year. I don't know whether that will take him away physically from our presence or not. However, that is the background of the structure of the Committee in its present composition.

MR. PERRY: Can you just refresh our minds on the sub-divisions now, the task forces?

THE CHAIRMAN: The kind of questions we might want to ponder are these. One, do you think it would be appropriate to recommend the addition of new bodies to the Committee, at least in the sense of replacing those who have left?

Secondly, what do you think the disposition of our three existing sub-committees should be, which were the cultural and linguistic committee, constitutional committee, and the fiscal and economic committee?

Thirdly, what about the various task forces that we had set up and that have been working

on particular subjects, now that we have a clear definition of the tasks of the constitutional conference ?

Fourthly, what explicit relationship might the continuing Committee have to the various internal governmental apparatus which we now have for serving these committees and so on; always bearing in mind the main objective, being to get the maximum value out of this Committee as an Advisory Committee without imposing unduly in any formal way upon your time.

PROF. BRADY: When you mentioned task forces, Mr. Chairman, do you mean within the service of the Ontario ----

THE CHAIRMAN: No, you recall we had a number of task forces constructed out of this Committee.

MR. PERRY: I wonder if we can hear what they are. I have forgotten, I must say.

THE CHAIRMAN: Can anyone remember?

PROF. FOX: B. & B.; Supreme Court; Senate.

THE CHAIRMAN: Distribution of powers; national capital.

FATHER MATTE: Bill of Rights.

MR. PERRY: We had one on regional economic disparities.

MR. GREATHED: That is right.

MR. PERRY: I am chairman of that.

MR. GREATHED: We had six, I believe.

MISS WILENSKY: That is six.

MR. GREATHED: I think the one on the Senate and judiciary was melded into one called "institutions of government".

DEAN LEDERMAN: That is right.

PROF. BRADY: There is one point I would like to raise. There are members of the Ontario Civil Service who are concerned with these issues now in a way that they were not a few years ago, I think it is safe to say, and as the federal-provincial discussions increase.

Could there be a closer association between some members of the Service and our task forces or sub-committees?

PROF. CREIGHTON: Surely there was.

PROF. BRADY: There was some. I wonder if it could not be extended. That would seem to me more important than, let us say, drawing people fresh from outside. Now, there are some members of the Service here, including yourself, of course, Mr. Chairman. What do you think of that? I don't know, but it seems to me, as an outsider, important to be discussing these issues with people who are confronting them after all as actual matters of government policy.

The exchange of view, I think, should be helpful to this Committee in making recommendations or suggestions to the government.

THE CHAIRMAN: Well, we have drawn Mr. Dick and Mr. Callaghan into the process very, very heavily now, as is absolutely essential, in my view, both to the plenary meetings here, now that we are dealing with these substantive matters, and to our support work.

The other obvious senior officials would be from departments, I think, such as Education and Municipal Affairs.

When you get into distribution of powers I think many of the senior officials from most of the departments have something to contribute in terms of an understanding of the practical problems that they face in their daily work.

The commentaries we have been getting from the Deputy Ministers in connection with the distribution of powers, I think, are very, very revealing and helpful indeed.

All of these people, of course, are extremely busy as far as meetings are concerned - not that Mr. Dick and I are not similarly afflicted. I agree that there could be useful contact, but the question is the best way of going about it.

Really, I think, if these people are going to be involved in large part, they want their attention directed to particular things; they want to know exactly what is expected of them and what they can help to do.

PROF. CREIGHTON: In other words, you

don't think they should be ordinary members of the task forces in quite the same way as the members of this Committee might be?

THE CHAIRMAN: I think it would be very helpful for them to be present in those task forces if one is, as I say, really directing one's attention to particular issues on which they can help in terms of their background. They might not want to do it continuously.

DEAN LEDERMAN: Perhaps, Mr. Chairman, the fact that the whole process is accelerating, sharpening, coming into focus more, means that the agenda of this Committee - either this Committee of the Whole or whatever parts one might divide it into - the agenda will become more specific. Perhaps this is one of the things we should aim at. A much more specific agenda than we have had in the past would permit us to draw in the people Dr. Brady is speaking of, and not waste their time.

I do not mean by that to disparage the way we have proceeded up to now. When you think back to four or five years ago when we started, there was not a Federal-Provincial Affairs Secretariat, and we started with very large questions from stage zero almost. I think we have gone through an inevitable process, but we are getting more particular now, and there is now a sophisticated secretariat. The members of the Committee itself do not have to be looked to (as quite properly we

were four or five years ago) to originate material.

Perhaps this Committee, as a Committee, is most useful now as a critic of proposed positions, and proposed positions are getting more and more specific. Agendas become more and more specific every week.

I do not mean by that to suggest that individuals might not, as individuals (as Dr. Creighton suggests) go on originating their own views. As a matter of fact, as he also quite properly pointed out, the more specific you get, the more clear some of the different points of view that are genuinely held among ourselves become apparent; and there is no point in spending our time trying to reconcile the irreconcilable in some kind of bland document that is all things to all people. We are passing out of that phase.

THE CHAIRMAN: As you say, Bill, there are, for example, seven explicit ministerial committees or areas of study here, within which the Government of Ontario will have to evolve and put forward a position; and I think one will want, in our agenda, to confront very directly the position that could be put forward in these areas, and have the advice of this Committee on it.

I don't know how you might see this tying in, Rendell, if one thinks of what one is going to put up with in this Committee in the judiciary, the Senate, or whatever.

MR. DICK: I don't know how you segregate it, because mine all melds in with Professor Brady's observation about civil servants and so many other things; but my reaction, if I may so say with respect to the modesty of the gentlemen here assembled, is that this sort of Committee has a tremendous value to the public service.

In my own selfish position, knowing the reaction of you gentlemen to what Mr. Wishart may be saying and what Mr. Wishart may be thinking about fundamental rights, the judiciary and these other things, is of great value; and I am sure it is the same, obviously, with the Prime Minister, and, I am sure, with equal emphasis, to the Minister of Education.

As it is important to them, so it is important to civil servants. I don't think it is necessary for civil servants to be part of this Committee, or even to be part of the sub-committees but I think it is very important, from my own selfish point of view, that your sub-committees and even this Committee have direct contact with civil servants in these areas from time to time as you consider matters, so that they can see what you are doing and you can see how your thinking is affecting them and so on. The more of that contact there is, the better. I would hope it would be on a sort of ad hoc basis as now we come down to specific

items such as your Chairman has referred to.

Your Committee will deal with them within your group, but at some point you make specific contact with the civil servants who are responsible in this area; whether it be at a meeting just to exchange thoughts, or you want to give specific notice of items you want to discuss with them. It is this participation that matters.

I will be the first to admit I get pretty insular in my attitude sometimes, in my own parochial way in my department. This can be broken down and it can be eliminated to a large extent by getting some rather revolutionary views from gentlemen such as yourselves.

So I would like the thought of civil servants playing some active part in these specific areas as necessity arises and as this Committee and sub-committees would like to do it.

PROF. MEISEL: It seems to me in the long run the major role that a Committee of this kind can play is that it meets precisely this point: that each organization or group develops its own blinkers and prejudices, and I think it is very useful to have institutional means of tapping views which are not produced within the framework of these blinkers.

I think certainly as a political institution this is an extremely interesting phenomena, to have a Committee like this which is, in a sense, utterly

irresponsible but which nevertheless -----

MR. PERRY: Non-responsible!

PROF. MEISEL: --- can produce whatever notions it has and present them to very responsible people, who may reject most of them but who can, in the end, benefit from the irresponsibility, which also encourages creativity, I think.

MR. PERRY: Right.

PROF. MEISEL: By the same token, whilst perhaps this is not an excuse for the Ontario taxpayers to support this, but from our point of view it is extremely useful to have the opportunity to discuss some of these ideas with people who are much more narrowly concerned with implementing them but who can correct some of the wild notions that we might have.

MR. DICK: There is another benefit, too, Mr. Chairman, just from my own selfish view point again, and personal view point. I would hate to see this Committee or its like vanish, because it is a tremendous political advantage for the government to have an outside public opinion. I mean, you men are all representatives of various groups of the community. To have the government deal with this type of problem without some sort of information like this, I would think, would be tragic.

THE CHAIRMAN: Kind of participatory
bureaucracy! (Laughter)

MR. DICK: I am glad we got the "participatory" in.

PROF. FOX: I think this discussion tends to direct us towards the notion of a sort of functional relationship on specific items as they arise. Perhaps the secretariat can bring the two ends together, civil servants and the Advisory Committee members who are concerned, and work out ad hoc meetings, as Rendell suggests. It seems to me that is the most fruitful thing to do.

THE CHAIRMAN: Well, I think it is; I think we can take that approach.

I must say again, as the Prime Minister said to you himself many times: I know that to the extent that he has had time to meet with the Committee and to the extent that we have been able to advise him of the Committee's views, and to the extent that he feels reassured by the very existence of the Committee, that it is there and there are people that he can draw on and consult with - is of very considerable value in this time.

The one question I would like to hear your views on, quite frankly, is this. If the Prime Minister felt inclined to consider the appointment of two or three other members of the Committee, would this somehow become an intrusion on the well-defined club that has been developed?

PROF. MEISEL: If it did, it would be high

time it were done. (Laughter)

PROF. CREIGHTON: If it did have this effect, it would be high time it were done.

PROF. BRADY: Just one point relative to that, and that is the size. There are academics around this table, and most of them would probably agree that you can only have an effective seminar of a certain number. Opinion differs as to what that number is, but once you pass it it is extremely difficult.---

THE CHAIRMAN: Yes.

PROF. BRADY: --- to maintain effectiveness. I have been struck that in the last two or three meetings of this whole Committee, our discussion has been more effective than it was perhaps earlier. I am not going to try to analyze why, but at any rate it may be ----

THE CHAIRMAN: Be a little careful there!

PROF. BRADY: --- that we recognize our differences. The Committee, after all, is made up of people who have quite different views, and that is wholesome. However, while we recognize our differences, we do not allow the differences to incommode us in discussion.

I think - though I would like to get your reaction and ask the secretariat - that our discussions have been more effective of late, and I would hope that we would have more discussion of the whole Committee.

Now, if you add to the number a number of people from outside, remember, this is an infusion of fresh people, and how they accommodate themselves to the existing group I don't know. They might do it quite effectively; their addition might be an advantage. On the other hand, it might be a disadvantage. I would not like to predict. You would certainly enlarge the size of your discussion group, and the larger the discussion group the more difficulty there is in getting real, coherent effectiveness in the discussion. That is my impression of the groups.

MR. GATHERCOLE: Perhaps, Mr. Chairman, what you visualize there is to add one or two on a gradual basis, rather than bringing in an entirely new corps.

THE CHAIRMAN: Oh, yes.

MR. GATHERCOLE: And for that reason it does seem to me that it would be more advisable to proceed to fill in such gaps as you think might exist and to meet the requirements by introducing some fresh blood, rather than allowing the forces of attrition to bring about a sudden rejuvenation of the Committee at a later stage.

It would be better, Dr. Brady, if we could do this on a gradual basis, and introduce one or two as time goes on, rather than have the whole Committee get so low in numbers -----

PROF. CREIGHTON: You don't expect we are

all going to die, do you?

MR. GATHERCOLE: Nevertheless, it is a fact that some of us -- I have not attended many meetings (which I have no doubt has been a good thing); and I think the Committee and the Prime Minister ought to feel free to fill in some of the gaps on a gradual basis and that this would be welcomed by the members of the Committee.

THE CHAIRMAN: I had not thought of adding, say, any more than a couple of additional people -- incidentally, not for the sake of numbers whatever; but if there are such people whose qualifications suit them for it -- and on that subject I would welcome any advice that you might have to give me that I could convey to the Prime Minister -- if you think there are people who would make a contribution by their addition to this Committee, I would think it would be well worth considering.

I would also like to hear any views, certainly before I put forward any names, as far as the size is concerned. I do agree with Professor Brady that I must say that in this size of group one can feel much more relaxed, and certainly I, as Chairman, do not feel obliged to be a maestro quite so much as in a larger group.

DR. FORSEY: I would think that you would not want, in any event, to get the thing much bigger than it was originally. One rather

felt that Alec's advice was "More of you stay oftener"; but I rather think that with the rate of absenteeism, if you don't get above the original number, we shall not get an unwieldy number here for discussions. We have ten to-day, which is perhaps a little on the low side on our past record, but we seldom get above thirteen or fourteen. I don't think that is unwieldy.

THE CHAIRMAN: I had not thought of more than two or three at the most. Incidentally, what might affect us in part is if any members are coming up for sabbatical years or anything of that kind. If they could let me know some time in advance, this would help to foresee what lies ahead.

MR. PERRY: I was going to say, I have been rather concerned over the last year about being, most of the time, the only member of the economic and fiscal division present.

THE CHAIRMAN: Yes.

MR. PERRY: McIvor's return would solve part of it.

THE CHAIRMAN: That side has lagged, hasn't it.

MR. PERRY: Dean Dillon has dropped out and George, as he admits himself, only comes occasionally, so we are down to half.

THE CHAIRMAN: You need more fortification on that side. That's fine. I think that gives me enough to go on.

There is one other minor administrative point of a kind, and that was the impending end of the fiscal year.

MR. GREATHED: I would like to remind members of the Committee that our fiscal year ends on March 31st, and if they have any claims to make --

THE CHAIRMAN: From the Treasury.

MR. GREATHED: From the Treasury, would they please make them before that date. I am told by our Treasury accounts people that they will consider an extension to some time in the first two weeks of April, but they would prefer to have the claims in for this fiscal year by March 31st.

DR. FORSEY: Mr. Chairman, in connection with additions to the Committee, I would venture to make one suggestion of a general kind; that is, that we might find it useful to have one more historian on the Committee. We have a certain number of very good lawyers; we have a certain number of very good political scientists (with one obvious exception, I think they are very good); but we are perhaps a little light on historians.

I can say this with a clear conscience, not being a historian myself, that I am more and more convinced when I read various documents that come to me on constitutional matters, that they suffer from a lack of knowledge of Canadian history. Over and over again I find great gaps - or worse than gaps, frightful howlers - because these people

just don't know even as much as I know about Canadian history, let alone what they ought o know.

PROF. CREIGHTON: You will get another constitutional conservative; that is what will happen if you appoint another historian. (Laughter) Almost certainly.

MR. PERRY: Let us get an economic historian then.

PROF. CREIGHTON: I would like to recommend one, if I may, Mr. Chairman, and that is W.L. Morton of Trent University.

PROF. MEISEL: I will make some recommendations later.

THE CHAIRMAN: All right then.

PROF. CREIGHTON: Mr. Chairman, I would like to ask another question. When you began discussion of this particular item, you said that Mr. Robarts at the time he met the Committee (I was not present on that occasion) made two points. The first was that he wanted the Committee to continue its work, and the second one I was not so certain of.

THE CHAIRMAN: The second one is simply that he asked us to have the discussion we have just had.

PROF. CREIGHTON: I know, but had he any other thing in mind?

THE CHAIRMAN: No, he didn't. My recollection is he did not predispose the discussion

in any way.

DR. FORSEY: May I refer to the point Professor Creighton raised earlier under item 3, I think it was.

THE CHAIRMAN: Distribution of powers.

DR. FORSEY: It looks to me that, for example, if Professor Atke's paper is to be put into this volume, you will have something on two important points in the distribution of powers, and on both these points a very marked point of view with which some of us would strongly disagree.

I am inclined to think that it is worth while considering whether some members of the Committee with special competence in regard to certain of these matters, might not be asked to put in a study of certain features of the thing.

For instance, I was much impressed one day when we were discussing the question of the residual legislative power, with the specific points that Professor Lederman made about this. I think if he could do for this volume a short statement of just what residual power now involves and what would be lost if it were, for example, just dropped from the powers of the central Parliament, this would be very valuable.

I don't know whether perhaps something on the spending power might not be done by somebody; something on the taxing power. There are a variety of things that occur to me. It seems to me

that if you do not make some provision for something of that sort, there will appear to be a large gap in your second volume, and the gap will appear only/^{the}more yawning if you have two highly provincialist contributions from Professor Atke -- always assuming that they pass muster with the Committee in general or that the secretariat, having heard what the Committee has to say about them, thinks they are worth putting in. It may be the Committee is talking through its hat, or some members are talking through their hat; but I think you run the risk, if you just put in the two Atke papers (which appears to be likely now) of getting a rather biased view on two particular items and very little else about these very critical problems.

MR. GREATHED: I think, Dr. Forsey, that the suggestion for perhaps including Professor Atke's papers was not so much for their point of view but for the fact that they had been commissioned as part of the work that we were concerned with, and in fact had been funded by the O.A.C.C. It was not that the O.A.C.C. had specifically requested them, but it was just in the same way that Mr. DeLisle did his work: I just thought of them in that form and not specifically because of their point of view.

DR. FORSEY: I know. My only point is that if you have practically nothing on the

distribution of powers in the volume, barring the two Atke papers, you lose something of the balance and the ordinary reader says: "All I see here on the distribution of powers is these two things" and he may not be aware that there may be a good deal of other opinion of quite different kind. I thought it was desirable perhaps to maintain some sort of balance, and also not not to have your sole contributions on the distribution of powers dealing only with broadcasting and international relations.

PROF. FOX: That's a point.

DR. FORSEY: It is not the only point I am making. I happen to think that one of Professor Atke's papers is very bad, but this is my personal judgment. The other one looks to me, from the glance I have had at it, to be quite reasonably good.

However, regardless of their merit, and even if they were superbly done, I think the problem still remains of a gap here and an apparent weighting on one side.

THE CHAIRMAN: I think this point is very important, particularly since we are coming up to very serious discussions in the constitutional conference on the distribution of powers, on the spending power and on the taxing power.

The statement agreed to at the conference and supported by the Prime Minister of Canada,

laid special emphasis on the spending power and the taxing power; so that this takes us , I think, very much to the point as to whether we want to commission any work in this Committee or elsewhere that could be done within this period of time.

DEAN LEDERMAN: Mr. Chairman, I think Father Matte's point about the distribution of powers is well taken, and there is something of very deep significance here.

The Province of Quebec is the only government that has put forward a series of propositions, rather specific ones, about distribution of powers. Everyone else has shied away from it, including the federal government, and this is a sign of how fundamental it is. We have shied away from it, and this is why we have so little perhaps to put in this volume on this subject.

FATHER MATTE: It is a pity.

DEAN LEDERMAN: The trouble is, being therefore the heart of the matter and/being so complex, the speed with which something good can be produced has to be looked at.

The other thing is, of course, that if we put out a volume like this, no matter how many qualifications you write into the introduction and how often you say that these are the views of the authors only, nevertheless both official and unofficial people in the country who take the trouble to read it are going to say: "Well, to some

extent at least this is the way the government of Ontario is thinking. You know, the correspondents reacted ---

THE CHAIRMAN: Oh, yes.

DEAN LEDERMAN: --- that way to the first volume.

I did not get Professor Atke's paper on international affairs read. I got the one on educational television, and it is mainly descriptive and lays out the problems, I think, quite well. Goodness, it is complex enough, but it does not have the complexity of the other subject, because international affairs is one of the themes that ranges over the whole distribution of powers, for the simple reason that every governmental subject has its trans-national projection - its projection beyond the boundaries of the province and beyond the boundaries of the country, its national and its international projection, everything you want to name.

I think even if that paper (and I have not read it yet) were completely satisfactory to all of us in its content (and I do not comment on its contents) I am not sure that that is the right way to start out in a volume of Ontario papers, with some comprehensive treatment of the distribution of powers.

THE CHAIRMAN: I think all of these points are highly pertinent indeed, and I wonder

if I could make the following suggestion. I think it is an issue we should think about carefully and not arrive at too quick a decision. On the other hand, we do not want to leave it unduly if we are going to do anything about it.

I wonder if members would like to talk about it informally over the lunch hour and during the interval . Then we might return to that subject later in the day, the more so since by that time we shall have been through some of these draft propositions on the distribution of powers and have some feeling about the development of this aspect of things.

Now, as I mentioned, I hope you will forgive me if I slip away for a little while to keep an appointment with Mr. Bryce on matters not entirely unrelated to these things. I would like to ask Harvey Perry if he would be good enough to be Chairman of the Committee of the Whole.

Harvey, you might want to carry on working through the draft propositions. Also, Mr. Stevenson will distribute a paper which contains some very preliminary notes that have arisen from the discussions we have had here recently on the federal spending power, as a help to this discussion that you might want to look at over the lunch hour.

Harvey, it is up to you when you break. I would suggest you might want to work on for a

bit and break for an hour or so for lunch and resume as you see fit. I will be back no later than two-thirty.

FATHER MATTE: Mr. Chairman, is there any Civil Service task force on the distribution of powers in the province?

THE CHAIRMAN: There is not at the moment, but I think we have discussed the idea of having one.

MR. STEVENSON: We have its members laid out.

THE CHAIRMAN: I hope not literally.

-----Laughter.

MR. GREATHED: Listed.

MR. STEVENSON: Listed, right.

-----Mr. Macdonald left the meeting at this point, and the Chair was taken by Mr. Perry.

THE CHAIRMAN (Mr. Perry) Mr. Greathed has suggested that since these further propositions are not ordered in any way or numbered, that we might look through them quickly to see whether they seem to be in a logical order as they are. My own impression is that they go sort of from the general to the more particular.

MR. GREATHED: You may want to read out the statement in each case, Mr. Perry, just in case the members have shuffled them around.

PROF. BRADY: Are we taking up proposition 1?

THE CHAIRMAN (Mr. Perry): They are not numbered at all, Alec, not even the pages. The first one under the heading "Fundamental rights" reads:-

"The written constitution of Canada
"should guarantee certain fundamental
"freedoms" etc.

-----Mr. Callaghan joined the meeting at this point.

THE CHAIRMAN (Mr. Perry): I think there was some comment earlier along the lines that this may not be sufficiently comprehensive even.

PROF. CREIGHTON: Unless it should be qualified. "Freedom of assembly and association," there are doubts expressed about that spacious definition.

THE CHAIRMAN (Mr. Perry): These are fairly basic. Should we go through these in the order? The first freedom is "conscience and religion". I suppose that is generally acceptable.

MR. DICK: I wonder if I might explain by way of preliminary statement how these things came into being, the sort of general thought in mind in the preparation. I will be frank to admit, without pretending to use the term "Frank", that a lot of this came from one of Frank Scott's earlier excursions into this area. The basic principle that was rather in our minds was, looking at this conglomeration of freedoms, rights or whatever we

call them, on the basis of those which were freedoms in the sense that there is no duty associated with the freedom; these are complete freedoms from all restrictions. When you get to other types of civil rights, so to speak, they involve a certain amount of restriction upon others so that you enjoy those freedoms, if you follow what I mean.

These that we have listed here are the ones that historically, legally and constitutionally have always been associated with a complete absence of fetters pretty well; much more so than other things such as when you get down to the matter of right against self-incrimination and legal rights and other more specifics.

PROF. BRADY: Do you think that might be explained, put into the explanation very briefly?

MR. DICK: Well, I must admit I think it was deleted somewhere in the revision of the draft, to make it a little briefer, because we had gone into this. I must admit when Frank and I were working on this we had gone into this type of breakdown. I don't want to stand alone with this sort of thing. (Laughter)

THE CHAIRMAN (Mr. Perry): It almost seems from explanatory note No. 3 that you had some other views in mind, because this suggests that there are corresponding -----

PROF. CREIGHTON: Restraints.

THE CHAIRMAN (Mr. Perry): ---- liabilities

to respect the freedoms of others.

MR. DICK: This ties in again with the association with the original charter that was presented by Mr. Trudeau, in which he mentioned the two backgrounds: the first principle where you express a freedom with no restriction whatsoever in its application; and then the other type of concept, the European convention, in which you specify the freedom but then you also put in limiting language to make it clear that this freedom must in some cases be restrictive, such as that your freedom of speech must contemplate laws against defamation, sedition and so on. The third paragraph was rather in that context, because, again, in the detailed work that was done and the explanations given for these, we explained that in our view the complete statement in twelve words might not be sufficient guidance to the Courts to recognize that our country actually meant the freedom of speech should be recognized as being in a context of restrictions so as to prevent unfettered defamation, sedition and so on.

PROF. MEISEL: You are suggesting then that these constraints that should be observed by the Courts should actually be placed in the constitution itself?

MR. DICK: Yes.

DEAN LEDERMAN: They are, for instance, in the Universal Declaration of Human Rights of the

United Nations. They have a blanket, clean-up, constraining clause at the end. I think it ought to go in each time.

MR. DICK: This was the type of thing. How it would be done, we leave for discussion; but certainly our thought in that context was that we are not talking about a statement of these freedoms in three very brief sections, something that will require some detail.

PROF. CREIGHTON: Similarly, the freedom of association is limited by the Riot Act, among other things.

MR. CALLAGHAN: They are all limited.

DR. FORSEY: If you have a closed shop or a union shop, you have a limitation there. Perhaps there should not be a limitation or perhaps there should, but you had better be aware of what you may be heading into.

PROF. CREIGHTON: But they are not unfettered, are they, really, Mr. Dick, any of them?

MR. DICK: In our present constitution and unwritten constitution, as you know, we have these freedoms, but they are fettered, they are intentionally fettered. Every one of them is fettered by the Criminal Code, for instance, so that they are presently fettered.

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Our thought was, again, expressing them in an entrenched Bill of Rights they should not be done in such a way that we throw away the existing

fetters. Now, the language expressing them will have to reflect this principle.

PROF. CREIGHTON: Is that indicated clearly enough in your explanatory notes here? It seems to me it is.

MR. DICK: No, not in this proposition.

THE CHAIRMAN (Mr. Perry): Perhaps the wording of 3 should be strengthened a little bit. Simply to indicate that these constraints should be observed is not very strong language.

PROF. MEISEL: In fact I was confused by that. I thought when I read it: what good is it going to be if you indicate? Unless you actually spell it out very rigorously, nobody is going to pay attention to it.

THE CHAIRMAN (Mr. Perry): To require that these constraints be observed.

PROF. CREIGHTON: They exist right now.

MR. DICK: We originally had a draft proposition which came in with this, which dealt specifically with the matter of restriction of fundamental rights. I am speaking from some documents which you have not seen but which were drafts that Frank and I had prepared for the consideration of others than this illustrious group. We had dealt with it point by point, and dealt with the matter of restrictions in a different manner, and they have been sort of abbreviated

and brought into one document.

I would have to agree with you that the point of restriction is so fundamental to something going forward, that it should be specifically set forth.

DR. FORSEY: Isn't the present position pretty much this, that our rights in these respects arise out of what I understand to be the common law principle that you have a right to do anything you are not specifically forbidden to do; that the law the subject of these various things is not a law affirming the right to do this and this, but a law saying you cannot do this, from which you draw the conclusion that you can do the other thing. You can't say certain things: therefore you can say everything else. You can't assemble in certain circumstances: therefore you can assemble in everything else. That is the old Dicey approach pretty much, isn't it? Isn't it just about the present legal position?

DEAN LEDERMAN: I would draw one thing to your attention, that what you are doing with these so-called freedoms - and they differ from specific rights in this respect - what you are doing is to create areas of option and opportunity, where the individual may choose to do something or not to do it, without the law telling him one way or the other.

The right to vote, I think, belongs in

fundamental rights; it belongs among political rights; but there is one that that to be specifically conferred by the Election Act. You have to have the whole apparatus for compiling the voters' list, for having hearings, and compelling the putting of your name on the voters' list if people who think you are going to vote the wrong way have left it off and so on. Then you have to be able to raise Cain at the polling booth if they do not give you a ballot; and you have to be able to invalidate elections if people have been refused the right to vote who should have been allowed to vote, or if people have been allowed to vote who should not have been allowed to vote.

So the right to vote belongs properly among the political rights. I think, for instance, Dr. Cory includes it there, along with these other things. But it is the one that does not have this character: it has to be specifically conferred.

You have freedom of speech. You can say anything you like except - you can utter any words you wish unless they are obscene, seditious or defamatory in the sense of the laws forbidding these things. So you get a wide area of option and opportunity to define in a residual way. The only limitations are these specific limitations - sedition, libel and so on.

PROF. BRADY: It is just as important

to mention the constraint as it is the freedom.

DEAN LEDERMAN: You can express the freedom in very general terms, and the classic ways of doing it are well known; but I think you do want to express the constraint, again, that there are constraints, and you want to express that in very general terms.- as the European convention of human rights does.

PROF. CREIGHTON: Paragraph 3 does not do this.

DEAN LEDERMAN: And leave it to the Courts to strike the balance, and also let the Legislature in by this point I was making earlier, by saying that implementing and supplementive and protective legislation from the Legislature is fine.

You can't sit outside any church on Sunday morning with your automobile and honk your horn while the service is going on inside, because there is a section of the Criminal Code that says you are disturbing a religious service if you do that. All the sanctions of the criminal law can be used. This is what I mean by supportive legislation.

In the matter of freedom of speech, Hyde Park Corner is no longer enough. The purpose of freedom of speech, as Chief Justice Duff said, is to give you the climate of a free-wheeling public opinion. That is the life blood of parliamentary institutions.

Now, think of that in connection with

radio, T.V. and the newspaper press; think of that in connection with the monopolies that exist. There are several cities in this country where radio, television and newspaper press are all in the hands of one private entrepreneur. What does Hyde Park Corner mean now?

Even these old freedoms need supportive legislation now, and the Senate has just started an inquiry on the media. Senator Keith Davey has instituted it. Maybe the Senate is worth something after all, because he has got his finger on something here.

THE CHAIRMAN: (Mr. Perry): Can we take it that 3 really should be re-stated to bring out some of the points that Professor Lederman has made?

PROF. FOX: Well, does that imply that existing restraints within the Criminal Code or anywhere else are simply to be accepted as the restraints that ought to be? That would be my only reservation.

THE CHAIRMAN (Mr. Perry): You say "existing restraints"?

PROF. FOX: Yes. If you imply by your construction of language that the existing restraints are acceptable, it may well be you would want to question these, alter them.

It may be that existing restraints requiring newspapermen to reveal their sources of information should not apply, but you would be

sanctioning them if you imply that they were acceptable as restraints upon freedom of the press.

THE CHAIRMAN (Mr. Perry) Fair corollary of examining the rights, that you should be re-examining the constraints.

PROF. FOX: That is right.

DEAN LEDERMAN: I am not trying to freeze anything in what I am saying.

PROF. FOX: I know you are not, but I am suggesting in our wording of this we should be aware of this problem.

DEAN LEDERMAN: What I am saying is that (a) you make the point in very general terms that there are restrictions, there always are. The American Bill of Rights is expressed in perfectly general terms, but the Supreme Court has always put restrictions on it and always will. It is inevitable. Chaos results unless you do.

However, you do not have to list and freeze the particulars. All I am suggesting is that you assert the freedom in general words, but then with equally general words you assert that there are always some restrictions on these freedoms; and that exhorts the Courts judicially to impose the absolutely necessary restraints.

All I am saying is that in addition to that, you want to license the parliamentary bodies to elaborate protective and supportive legislation and, indeed, to refine some of the restrictions.

MR. CALLAGHAN: Should that not properly follow with your proposition itself, as opposed to being in the explanation? You are making it part of the proposition.

DEAN LEDERMAN: Yes, I would; the way they do in the European convention.

MR. CALLAGHAN: So that the proposition you stated with responsibility which you are referring to, should be read into it?

DEAN LEDERMAN: Yes, but you use words of the same order of generality; you do not have to list all the particulars and freeze them.

PROF. CREIGHTON: No, but to assert the principle of limitations or restrictions does not mean that you approve any particular set.

MR. CALLAGHAN: You have to leave that open because times and social conditions ---

PROF. CREIGHTON: Change.

MR. CALLAGHAN: Exactly.

PROF. CREIGHTON: But to assert a principle does not commit you to a particular kind of restriction.

DEAN LEDERMAN: So use words of the same generality and you are not freezing.

PROF. CREIGHTON: But you must put that in, and you must put in, I think, a right of the Legislature to change these restrictions, either making them more rigid or more free.

MR. DICK: Of course, that cuts right to your principle of entrenchment, if you leave

discretion in the Legislatures to change your restraints.

PROF. CREIGHTON: I don't see how you can ---

DR. FORSEY: Bill has got the right thing - general assertion of the restraints. You can't really go much beyond that, it seems to me.

DEAN LEDERMAN: The United States Supreme Court under the search-and-seizure clause has developed quite a bit of law on the right to privacy and the prohibition of electronic eavesdropping. Congress has just enacted a very elaborate statute about this, which the Congressmen think is within the spirit of the Supreme Court limitations. Undoubtedly, the Supreme Court will take a look at this one of these days, and say whether they think the Congressional statute is valid or not, or in what respects it is valid and what respects it is invalid.

I would preserve judicial review in that sense, but encourage the legislature to get into the act too; at least, again in very general terms, leave it open to the legislature to get in.

MR. CALLAGHAN: I don't follow this. something
You can't have it both ways. If you entrench/
you are going to give it to the Courts to finally impose limitations on your legislature of how far they can go. I don't see how you can have it both ways.

MR. DICK: Isn't what Bill is suggesting the principle that you enact your fundamental rights; you then provide jurisdiction within the Court to permit the intrusions into those rights for certain purposes as set out in your modifying paragraph?

What would happen then would be that the legislature, if it felt that it was desirable to restrict some part of one of these fundamental freedoms, it might then pass a law which technically would fall within this general exception. It would then rest with the Courts to determine whether or not that legislative act was unconstitutional and ultra vires because of this general provision, or whether it was of such a nature that it fell within it and was therefore intra vires.

MR. CALLAGHAN: This certainly is not the type of entrenchment Mr. Trudeau has in mind.

MR. DICK: No.

DEAN LEDERMAN: That is my point.

DR. FORSEY: Surely it must be; especially if you think, as people apparently do, that he is borrowing from the American experience; because quite clearly there there is room for legislative intervention, and it has taken place on a massive scale in many instances, hasn't it?

DEAN LEDERMAN: Yes, this is going to happen anyway.

DR. FORSEY: Oh, absolutely.

DEAN LEDERMAN: Well, if the recommendations of the Royal Commission on Hate Literature go through, you are going to get considerable modification of the freedom of speech in this country.

MR. DICK: Yes, which, indeed, following the premise that the type of thing we have been talking about was then in force and effect, would ultimately end up in the Supreme Court of Canada for them to say whether the laws respecting the propagation of hate literature were ultra vires because they infringed this fundamental freedom.

DEAN LEDERMAN: Exactly. Mr. Trudeau was a member of that Commission too, and he signed that report.

MR. DICK: We will try that on. Following this a step further, if I may clarify it in our own minds and the minds of the secretariat who inherit the unhappy task of transferring this into effective language: you mentioned the general type of restriction that would be placed upon it. One of the fields of thought, of course, is that that is not sufficient to instruct the Courts as to the intention of the parliaments and the legislatures. Should you go further, and for each freedom go into more detail?

You are suggesting it should be general in the sense of the declaration of the United

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Nations type of thing; that it should be general rather than specific.

DEAN LEDERMAN: If I could borrow Father Matte's copy of the Charter there ----

FATHER MATTE: Constitution, you mean?

DEAN LEDERMAN: Yes, the federal paper.

MR. STEVENSON: While you are looking, Dean Lederman, the only thing that strikes me about this is that I can see, because of the desire to try to get a certain amount of specificity in the restrictions, that you could end up with a declaration of fundamental freedoms where the positive aspects took the first three lines and the limitations took the next twenty-five.

MR. DICK: If you look at the European convention, that is about the way it goes, isn't it?

MR. STEVENSON: Now, can you, in this balance, retain the kind of positive approach which the original intention of the declaration of freedoms was established for?

DEAN LEDERMAN: Here you are; here is what I am thinking of. You have to balance the generality of the assertion of the right with the balance of the generality of the exception; you have got to deal in the same level of generalities. You still want a three-page statement, not a three hundred page statement.

Article 29 of the Universal Declaration of Human Rights and Fundamental Freedoms:

"Everyone has duties to the community
 "by which alone the free and full
 "development of his personality is
 "possible."

Section 1 of Article 29. Article 29, section 2:-

"In the exercise of his rights and
 "freedoms everyone shall be subject only
 "to such limitations as are determined
 "by law -----"

That lets the legislature in:-

"--- solely for the purpose of securing
 "due recognition and respect for the
 "rights and freedoms of others and of
 "meeting the just requirements of
 "morality, public order and the general
 "welfare in a democratic society."

Now, there it is right in the Universal Declaration
 of Human Rights and Fundamental Freedoms, and
 Article 29 modifies the whole of the first twenty-
 eight articles.

MR. DICK: Yes, in a much more restrict-
 ive fashion than we have in the common law at the
 present time.

DEAN LEDERMAN: No, I don't think so.

MR. DICK: Don't you think so?

DEAN LEDERMAN: But the modification is
 at the same level of generality as the original
 assertion. You see what I mean?

DR. FORSEY: So that you won't get

caught in Paul Fox's trap, of saying that Section 123(a) of the Criminal Code is hereby made eternal.

DEAN LEDERMAN: Hereby made eternal and sacred, that is right.

THE CHAIRMAN (Mr. Perry): This is the basic principle, an age-old one, that every freedom carries the corresponding responsibility to recognize the same freedom in others.

DEAN LEDERMAN: Yes, but if you just assert the freedom in general terms, you arouse either unwarranted expectations, unjustified fears, or both. You just read any newspaper to-day and the emphasis on the assertion of rights without making the point about all rights have to be limited: everybody who wants anything from Ottawa these days is talking in terms of: "What about the consumers' right to be free of the hazard of dangerous products?" and so on. Everything is being cast in this form in these days, and some unwarranted expectations have already been aroused.

PROF. CREIGHTON: In universities, for example.

THE CHAIRMAN (Mr. Perry): Yes, I think we have got the message. Are there any other rights that should be listed above. These are the sort of basic, standard items. Did you consider any?

MR. DICK: There is one other one.

We did not reject it, but it did not appear here. That is the right to an election every five years, which hypothetically will be in a written constitution at some point, as it is now; but is this one of those fundamental freedoms?

In our own discussion, frankly, I do not think there is anything that is more appropriate and really closer to a true democracy than the absolute, irrebuttable right that you will have an election every five years, or whatever period you want.

PROF. BRADY: You would not specify a number of years though, would you?

DR. FORSEY: I would think not. The right to periodic free elections is what we ask for.

MR. DICK: If the government of Canada passed a statute providing for an election every twenty-five years ---

PROF. CREIGHTON: That is periodic.

MR. DICK: -- that is periodic.

DR. FORSEY: Yes, but this, it seems to me, is where your Courts would come in and say: "Come off it now. This won't do."

MR. GREATHED: We hope.

MR. CALLAGHAN: This is placing an awful lot of faith in the Courts.

MR. DICK: Yes, I haven't that much faith in our judges.

DEAN LEDERMAN: Just to give the

government of Canada their due, they have done this in their proposed constitution for the Parliament of Canada. They have universal suffrage in; they have periodic elections in. Those would be specially entrenched. All they have done is to say: "We propose this for the constitution of the Parliament of Canada". This is in the part where they deal with federal institutions. Of course, the message for the provinces is: "We expect to see this specially entrenched in the provincial constitution too" and I think they are quite right about that.

MR. DICK: Well, of course, this is part of this fundamental rights Bill, isn't it, that that will be an imposition on the provinces. In other words, then if it is in your entrenched Bill, the provinces will, of course, be required to have their elections in a particular way.

DEAN LEDERMAN: Yes, but so far the federal people have not put in, are not proposing to entrench either the right to vote or the right to periodic elections in the general, overall Bill of Rights. They are only putting it in the parts of the constitution describing the structure and function of the Parliament of Canada, and they propose to entrench it in that respect. That is as far as they have gone. This may be caution, that they didn't want to -----

DR. FORSEY: The provincial legislatures

now, subject to the Dominion power of disallowance, can extend their own lives for ever if they want to, and they have done some very curious things on occasions. They have not quite done that, but they have extended it with very dubious justification on certain occasions.

MR. DICK: The Chairman asked whether there were any other fundamental freedoms we thought of, and, as I say, this was one. At the moment it rests with the individual legislature or parliament. We were wondering if it should be enshrined for all of us in the Bill of Rights.

DR. FORSEY: Might be a good reason for keeping the power of disallowance.

MR. DICK: Oh, boy!

DEAN LEDERMAN: Actually it is implicit in the right to vote, isn't it, periodic elections?

THE CHAIRMAN (Mr. Perry): This might be the right to vote once in your lifetime.

MR. DICK: When you turn twenty-one you have your vote, and it is then exhausted.

MR. CALLAGHAN: Do they put a time limitation on it, Bill, in the proposed legislation, or is it just "periodic"?

DEAN LEDERMAN: Just let us look and see. I will find it in a minute.

"The House of Commons shall be elected

"by universal suffrage. It should

"provide representation on the basis

"of population except as otherwise
 "provided by the constitution.

Ah, yes:-

"The House should be automatically
 "dissolved five years from the day of
 "the return of Writs. The House of
 "Commons might in time of war be con-
 "tinued by Parliament if such continua-
 "tion were unopposed by a vote of more
 "than one-third of the Members of
 "the House."

So except for a war emergency, automatically every
 five years, and this they propose for special
 entrenchment, for themselves.

MR. DICK: For Parliament.

DR. FORSEY: It is there now, in 91(1).

DEAN LEDERMAN: It is there now.

THE CHAIRMAN (Mr. Perry): Does the
 Committee want to express a view on this for the
 secretariat?

DR. FORSEY The difficulty about putting
 in any time limit is to fix the time.

DEAN LEDERMAN: Barring a war emergency,
 why not five years?

DR. FORSEY: Not more than five years.

DEAN LEDERMAN: Not more than five years.
 The political situation may dictate that it has
 to come oftener.

PROF. CREIGHTON: Very frequently it has.

DEAN LEDERMAN: Very frequently it has.

MR. DICK: I think I agree with that.

I think that is the top limit, Mr. Chairman. Too long a ~~period~~ defeats democracy; a shorter period really contributes to democracy.

PROF. CREIGHTON: We have had a lot of democracy recently then, haven't we?

THE CHAIRMAN (Mr. Perry): Well, I suspect you can be guided by a sympathetic feeling in the Committee towards this then. I wonder if we could go on to the next?

PROF. MEISEL: May I just ask a question?

THE CHAIRMAN (Mr. Perry): Yes.

PROF. MEISEL: This is very simple. The press, presumably, covers all that one needs to say about broadcasting, does it?

DEAN LEDERMAN: Speech, assembly, association, freedom of the press. Speech and the press: the more general term is "freedom of expression".

THE CHAIRMAN (Mr. Perry): Or even more generally "communication" nowadays, of all sorts.

DEAN LEDERMAN: Freedom of communication. You get into the problem that the Federal Communications Commission has had in the United States - equal time on national networks.

PROF. CREIGHTON: It shouldn't be "press, that is quite right: freedom of expression,

freedom of thought.

PROF. MEISEL: Was this discussed at all?

MR. DICK: No, we were speaking in generic language. The fundamental freedom known to the common law is freedom of the press, which in our nice flexible system at the moment is construed to mean virtually any type of media expression.

I admit that when you are getting to the point of having to commit all these beautiful principles to detailed language, you have to go to broader language. We use the term here as being that which we know now, which is all media, and in the expression of it it will have to be broad enough in its language to include all media.

DR. FORSEY: Yes, though you have to be careful, though, that you do not fall into the private broadcaster's practise of saying that they should be in exactly the same position as newspapers, because you have a different situation there altogether. Anybody who has had any experience with regulation of broadcasting, from the outside or the inside, knows this. "Why should we have a B.B.G. or C.R.T.C.? Do the newspapers have it?" "No, they don't." The answer is, of course: "Well, you are dealing with a very scarce commodity, the particular frequencies which are available."

DEAN LEDERMAN: And the expense of the equipment to go on the air, whatever the frequency. This is a very expensive business.

PROF. BRADY: It is limited, of course, to certain frequencies.

PROF. CREIGHTON: It certainly is limited to certain frequencies.

PROF. MEISEL: Well, should we say anything on this, or simply note the fact that in a new draft, I should think, "the press" is inadequate?

DEAN LEDERMAN: Well, I would say, in the words of the United Nations, that the Canadian Broadcasting Act and its provisions for regulation of broadcasting, are a limitation by law meeting the just requirements of morality, public order and general welfare.

PROF. CREIGHTON: Hear, hear!

DR. FORSEY: And the rights of others.

DEAN LEDERMAN: And the rights of others.

DR. FORSEY: Yes, I think if you have got a proper general restraint or constraint (whatever you say) indicated in the fashion Dr. Lederman suggested, you have got it - including your freedom of communication; but you would need something there, it would again need a proviso, a restraining clause.

MR. DICK: I think our restraining clause is going to be more important than the granting clause, myself.

PROF. BRADY: Particularly in this era, you think?

MR. DICK: Yes.

THE CHAIRMAN (Mr. Perry): Some of these things are really ridiculous when you get analyzing them, because "freedom of communication" might be read as meaning that Bell Telephone should stop making charges for any of its services.

MR. GREATHED: Hear, hear!

PROF. FOX: Well, you can retain the present phrase, which I think has a great deal of significance in the common law tradition - "freedom of the press"; and simply insert after it "and the media of communication".

DEAN LEDERMAN: Remember one thing. We are talking about the freedoms of human individuals here. If you are going to transfer these freedoms to great corporate bodies, Bell Telephone, Standard Oil and so on ---

THE CHAIRMAN (Mr. Perry): Bank of Commerce,

DEAN LEDERMAN: ---- this is a very different kettle of fish.

DR. FORSEY: You are also not talking about free goods, not talking about the matter of pricing. When you say that the press shall be free, you do not mean you get your newspapers without paying, of course.

One thing occurs to me here. If you just put in the right to vote, are you completely debarring compulsory voting laws? I don't like them, but this is an interesting possible aspect of the thing. Suppose the legislative body

decides it is desirable to have compulsory voting
a la Australia, and you say the right to vote ----

PROF. MEISEL: Including the right not
to vote.

DR. FORSEY: Does it imply then the
freedom not to vote? I think it does on the face
of it, and probably should.

DEAN LEDERMAN: You can use the word
"privilege" or "power" if you want to. The power
to vote implies that you do not have to, though
you have the right to.

One of the difficulties with these docu-
ments, of course, is that the word "right" is being
used in several different senses; but you could
put it the way they do it in Article 21 in the
United Nations Declaration:-

"Everyone has the right to take part in
"the government of his country directly
"or through freely-chosen representatives.
"Everyone has the right of equal access
"to public services in his country.
"The will of the people shall be the
"basis of the authority of government.
"This will shall be expressed in periodic
"and genuine elections which shall be by
"universal and equal suffrage and shall
"be held by secret vote or by an equivalent
"free voting procedure."

MR. CALLAGHAN: This normally does not

follow in the general statement of freedoms, does it? "Right" and "freedom" may be two different things.

DEAN LEDERMAN: Well, the right of an individual to vote is at his own option surely.

MR. CALLAGHAN: I just wonder if this might not be better off in some other section of the constitution where you are dealing with your Parliamentary procedures.

DEAN LEDERMAN: This is the way the federal authority have decided to deal with it, in their latest White Paper.

DR. FORSEY: Then it does not touch the provinces. Then the province would proceed to do what it liked about the right to vote as far as the constitution is concerned.

May I suggest we are now getting into some pretty technical details of drafting, where I think probably only very few members of this Committee are thoroughly competent; and that we might better at this point leave the details to the lawyers. I think the intention or the views of the members of the Committee have been made pretty clear.

THE CHAIRMAN (Mr. Perry): Is there anyone else who wanted to make a point on this particular item? I suggest we break for lunch.

PROF. FOX: I did, but I do not want to postpone lunch. Let me raise it and suggest

we immediately adjourn. Where do civil liberties fit in?

MR.DICK: Provincial.

MR. CALLAGHAN: They are provincial.

PROF. FOX: Provincial?

DR. FORSEY: Civil liberties? A lot of these are civil liberties.

PROF. FOX: Freedom from arbitrary arrest, this sort of thing.

DEAN LEDERMAN: With respect, I do not agree there.

PROF. FOX: You don't? They should not be included here?

DEAN LEDERMAN: They are mixed; they are both.

PROF. FOX: So there is no case for putting any reference to that sort of thing in here?

MR. DICK: Not in our submission.

PROF. FOX: Well, this is what I am raising.

PROF. CREIGHTON: What did you precisely have in mind?

PROF. FOX: Well, I am thinking of the usually accepted ones - freedom from arbitrary arrest, habeas corpus, due process.

DEAN LEDERMAN: Yes, I think that is a good point. Your freedoms don't mean anything if you have a Gestapo situation.

PROF. CREIGHTON: Freedom from arbitrary arrest and imprisonment?

DEAN LEDERMAN: Yes, that is another one that I would be prepared to see.

MR. CALLAGHAN: That gets right down to the very nature of your Bill of Rights. What is proposed here is a qualified Bill of Rights, not a complete Bill of Rights like the American; entrenchment of these (whatever you call them) civil liberties or freedom from arrest and detention, that sort of thing.

This Bill of Rights, I think, has been prepared on the understanding that the criminal law power would probably deal with those. That will be in the federal constitution, in our federal system remain with the federal government.

If you want to change that - I know the Trudeau proposal initially covers most of those rights - that is an area for discussion. There are very strong views on whether or not a Bill of Rights should cover that type of thing, having regard to the existing American experience.

MR. DICK: This is the way Frank and I became polluted with our other capacities as law officers, I think; that is, facing your criminal law enforcement in this country as distinct from the experience which they have gone through in the United States. We are all familiar with it.

Some of you may have read the article

in the New Yorker a short while ago, in which a very learned gentleman made a detailed analysis and practically filled the volume, taking the various decisions and showing the hysterical way in which those affected the whole American people, so to speak, as reflected in the views of their Senators, and ended up with legislation ultimately reversing decisions entrenched in the Supreme Court of that country. It was a very interesting article.

In any event, this has been the approach, quite frankly, of my Minister: that the matter of fundamental freedoms is one aspect of an entrenched Bill of Rights. The matter of entrenchment of legal rights, such as those relating to self-incrimination, freedom from arbitrary arrest and so on, are matters that, in our experience, we feel, having drawn the best of the English criminal law with the best of the codification of the criminal laws in the United States, we found a better system which at this point we were not prepared to surrender to a whole new area with entrenchment of legal rights.

This, as Frank says, is an area of discussion. This has been what has been concerning primarily, I think, the western provinces and the other provinces. Nobody fights with the idea of the entrenchment of what we call fundamental freedoms. I think everybody is concerned with the entrenchment of legal rights, and the effect that

that will have on criminal law enforcement in the country.

PROF. BRADY: You really get down to the difficulties when you come to that. Even the fundamental freedoms, as illustrated in this discussion, demonstrate some difficulties when you try to put them into an entrenched declaration.

PROF. FOX: I don't want to prolong this, Mr. Chairman.

THE CHAIRMAN (Mr. Perry): Three-quarters of an hour be enough?

-----The meeting adjourned at 1.00 p.m.

AFTERNOON SESSION

--- On resuming at 1:50 p.m.

--- Mr. Perry in the Chair.

CHAIRMAN (Mr. Perry): Can we get started again? The second proposition I have before me starts: "An extensive review and revision of existing laws". This verges on some of the discussion that we had this morning.

DR. FORSEY: Really a sort of cautionary addendum to what we were at this morning, because it does not involve any change in the Constitution at all, does it?

CHAIRMAN (Mr. Perry): No, it is more of a directive for complementary action.

MR. STEVENSON: This is exactly what is being done in Ontario right now as a result of the McRuer Report.

PROF. CREIGHTON: Well, it invites the Legislature to enlarge this sphere of human freedoms, and to restrict the restrictions; that is what it does, does it not?

"Such a Bill should serve primarily to
"protect the citizen who disagrees with
"the legislative and administrative
"interpretation of his rights"

DEAN LEDERMAN: This is precisely the whole thrust of the McRuer Report. As Don was saying, he said it was going on in this Province.

PROF. FOX: What is the vehicle for this in this Province at the moment?

MR. STEVENSON: In Frank's department.

Perhaps Frank could explain a little bit what is going on about reviewing existing legislation in the Province.

MR. CALLAGHAN: In our office we have what is known as a statutory review council, I think it is called, that was going through all provincial statutes with a view to preparing a Statute Amendment Act for the next session, and bringing all provincial statutes in line with the recommendations of the McRuer Report as best we can within the next year. So that in 1970 -- every ten years they do a revision of all the Ontario statutes, so that the 1970 revision will be able to come out with a series of amendments, they will have been amended; so that the main complaints that McRuer has made with reference to procedures for handling administrative matters will have been dealt with by this date.

In addition to that, they are proposing two pieces of legislation. One is the Statutory Powers Procedure Act, which will lay down minimum rules for all administrative tribunals and judicial tribunals in the handling of matters; along with a Statutory Powers Review Act or Judicial Review Act, which will establish a new procedure in the Supreme Court for reviewing administrative tribunals. These are in the drafting stage, and this is the sort of overall programme that is taking place. With the review of the existing legislation, going over funny acts like

the Bees Act and all that sort of thing which affect individuals, that review is presently in progress.

It is up to the Government how far they want to go in adopting Mr. McRuer's recommendations, and I know in many areas there will be opposition to many of these recommendations just from the straight administrative point of view, the practical point of view; but the overall picture is that they have started an extensive review of their legislation with a view to correcting the so-called abuses.

DR. FORSEY: I presume that the Ontario officials in presenting this will make some explicit reference to the kind of work the McRuer Commission did.

MR. CALLAGHAN: This again is like patting yourself on the back all the time. I think they have been mentioning that report all along.

DR. FORSEY: I know, but I am thinking that in the discussion one's examples are worth a great deal; and without blowing the Ontario trumpet very hard, you could say the Province of Ontario has been doing this kind of thing with a very extensive review, and we are trying to follow up on the kind of thing that Mr. McRuer recommended. I suppose everybody who is there will know about it, but some of the people from the outlying provinces probably need a little enlightenment.

MR. MEISEL: Newfoundland?

DR. FORSEY: Very much so, I should think Newfoundland might need it as badly as any, if not

worse.

MR. CALLAGHAN: From the practical point of view, I think the problem is it has never existed in this country, somebody or some board charged with the responsibility of reviewing each piece of legislation that comes out, either by way of regulation or statute, that is passed by a government; there has been nobody charged with the responsibility of reviewing to see how it affects civil rights of individuals and to what extent rights are being diminished or extended, and how they are infringing on other peoples' rights.

I think what will come from this and what they have in mind in this proposition, although I am not too clear about it, is that there should be some agency with some basic guidelines guiding it, reviewing all the products of the legislative draftsman, and having a deep concern for the fundamental rights of people, so that legislation just is not passed to meet an existing situation. They must recognize that each situation will probably affect somebody's rights.

The idea will be that if they have this constant review, the political leaders will be advised: "Well, you must recognize that in passing this legislation you are going to affect these rights", and then they can take responsibility for it. I do not think we ever had such an agency,

and I think that is what we are driving at in Ontario at any rate. I know in our office we expect the Legislative Review Council will continually review all new pieces of legislation coming through with that in mind, trying to keep the Government apprised of how this legislation affects rights.

PROF. CREIGHTON: It is really an invitation to the other provinces to follow your virtuous example.

MR. CALLAGHAN: Well, our example has not worked out in practice.

DR. FORSEY: It does seem to me that if you are talking about the necessity of backing up any guarantee of fundamental rights with legislation of an enlightened kind and administration of an enlightened kind and so forth, your position is going to be much stronger if you can say: "We take this pretty seriously. We have been trying to do this." We do not mean to say we are the only people in the world who have, but you can point this out and make some mention of it, I think.

I understand also that in the Province of Quebec they have been doing a rather extensive job on the revision of the Civil Code with some of these same things in mind. So that you can very easily, it seems to me, refer to the specific measures that were taken in two provinces.

DEAN LEDERMAN: This is precisely the

burden of much of what Mr. Wishart said in Ottawa at the conference. He quoted the figures on the number of recommendations implemented from the McRuer Commission, the work of the Ontario Law Reform Commission, and the Legal Aid Scheme, and the Human Rights Commission. He gave figures on all these things.

DR. FORSEY: There is no harm in a little bit of iteration.

MR. GREATHED: I think we all saw in the recent conference that some of the other governments were not too impressed with Ontario's virtues.

DR. FORSEY: That is not the way you want to put it. You see, we are not just preaching about it, we are not saying, "This is what you ought to do". We think this is a serious problem requiring careful consideration, legislation and administrative action, and we are not fooling; we have put ourselves to a deal of trouble to try and do, however imperfectly ---

MR. CALLAGHAN: This is not a new idea. I think there was provision in the Diefenbaker Bill of Rights for a review of all legislation coming out of Parliament, wasn't there? No action took place, but I think they provided for it.

THE CHAIRMAN (Mr. Perry): I wonder if I could intervene to suggest that we have the Fulton-Favreau Formula ahead of us and one or two

other contentious matters. I think we all agree in principle with this particular one. Can we move on?

PROF: MEISEL: Harvey, before we leave Fundamental Rights -- and we are now moving into Transitional Provisions, it looks like -- can I just raise one question which I think will be very brief because I am going to be shot down, I am afraid.

I am concerned about certain rights perhaps which should not be in the Constitution in the same way as they are not civil rights in the same sense, but it seems to me that the right of people to breathe pure air -- I am serious.

THE CHAIRMAN (Mr. Perry): Looking at you, Paul.

--- Laughter.

PROF. MEISEL: I think the question of polluting air and water is not a personal, of course, right and perhaps for that reason cannot be considered in the same context; but it seems to be any modern constitution, if it is going to guarantee certain rights, I do not think it can guarantee full employment because those things cannot be met obviously by the constitution, but it seems to me that the right not to have one's air polluted by a mine or factory next door or one's public waters polluted by industrial waste,

I think, ought to be stated somewhere.

Now, maybe this is not the place to do it. I am not sure whether you were talking about that, Bill, when Dr. Brady and I came back from outside. You were talking to somebody, said something about areas which were not really in the civil rights field. Maybe this was discussed briefly this morning, was it?

DEAN LEDERMAN: Not specifically, but I would see it as something far too complex to deal with in a bill of rights, although it has to be dealt with.

PROF. MEISEL: But does not need to be entrenched this way.

MR. CALLAGHAN: The whole basis is built on industrial development, and if you leave it in the hands of some individuals to say that the Steel Company of Canada is putting smoke in the air and polluting the air and "therefore I can shut it down" you are getting into fantastic problems.

PROF. MEISEL: These things need to be defined, obviously.

DEAN LEDERMAN: The people in Sydney, Nova Scotia, are just as happy as they can be that they have got smoke.

MR. CALLAGHAN: Probably the best any constitution could do is assign the problem of pollution control to one order of government so

that you do not get the mix-up and jackpot you are in now. It might very well be that in your distribution of powers you can assign pollution of air and water to the federal or provincial government, depending on how you do this. I do not think you can go beyond that.

PROF. MEISEL: I do not want to take too much time. I think perhaps this is a non-starter at this point.

THE CHAIRMAN (Mr. Perry): Becoming a little too fundamental in fact.

PROF. MEISEL: I think a lot of the ideas, while obviously very critical, they have arisen at a period when these things were not nearly as pressing as they are now.

PROF. BRADY: On the other hand, one can think of many desirable things, but surely you cannot really embody in a declaration of human rights all the desirable things that you think of.

PROF. MEISEL: I am slowly getting to see this.

PROF. BRADY: I can think of various desirable things that I feel desirable, but I do not know that I could persuade all my colleagues it has to be put in.

PROF. MEISEL: I see this, but I think breathing air that does not make you sick seems to me to be in a different category from other desirable things.

PROF. CREIGHTON: Among other things,

you have to stop people using motor cars.

MR. CALLAGHAN: And smoking.

DEAN LEDERMAN: You can't de-pollute by a few words on paper.

PROF. MEISEL: I think the thing has now gone into the record, Mr. Chairman.

THE CHAIRMAN (Mr. Perry): Assuming Paul Fox has been taking notes (laughter)
In my collection we are at the first of the transitional provisions reading:

"The Government of Canada should request
"the British Parliament --- "
etc.

PROF. FOX: There is one error, I think: it should be, "Parliament of Canada". Is it not the Parliament of Canada that requests the British Parliament?

MR. GREATHED: That is right.

DEAN LEDERMAN: By joint address.

DR. FORSEY: Yes, this would be a very retrograde step, taking us back before 1871.

THE CHAIRMAN (Mr. Perry): Is the "British Parliament" a specific enough expression?

PROF. FOX: I guess that is all right.

DEAN LEDERMAN: "Parliament of the United Kingdom" would be more accurate.

PROF. FOX: Would be better.

FATHER MATTE: I just wonder how realistic is such a proposal.

THE CHAIRMAN (Mr. Perry): Having disposed of the easy part ---

FATHER MATTE: Does it have any chance of success?

PROF. CREIGHTON: The second one:

"Establish a transitional amending
"procedure".

DEAN LEDERMAN: That is the bite.

PROF. BRADY: What is the significance, what is the relevance of this term "transitional amending procedure"?

DR. FORSEY: If you can get one, you have got it.

PROF. CREIGHTON: The word "transitional" must be stricken out of that. I mean, it is silly.

THE CHAIRMAN (Mr. Perry): Anyone going to defend it? Just what was meant there?

PROF. FOX: Was it meant a procedure that operated between the abolition of amendment by the U.K. Parliament and the adoption of an agreed formula in Canada, or was it meant to be ---

PROF. CREIGHTON: But you have got to agree to a transitional one even so.

PROF. FOX: Yes.

PROF. BRADY: When you agree upon it you want it probably permanent; at least you want it until you change your scheme of amendment.

DR. FORSEY: I think the most sublime

statement of pure faith I have ever seen in my life is 2:

"The transitional arrangement would

"involve the unanimous consent of all

"ten provinces and the Federal Government:

"it could, however, probably obtained

"with very little delay."

Ca c'est beau!

PROF. CREIGHTON: They started all this in 1935.

DR. FORSEY: Earlier.

PROF. CREIGHTON: Earlier than that, but not seriously until 1935.

DEAN LEDERMAN: You have got to face the permanent amending procedure first and last.

THE CHAIRMAN (Mr. Perry): Shall we say "permanent amending procedure"?

DR. FORSEY: This, I suspect, derives from what always seemed to me -- "infantile" is the word that leaps to my lips -- the belief that you can just get around all the difficulties of amendment by just saying: "Let us now declare the things that should be done in Canada" and then ---

PROF. CREIGHTON: Look at what happened to the Fulton-Favreau Formula.

PROF. MEISEL: Is there anyone here who has been involved in drafting this, to defend it?

MR. GREATHED: I am trying to remember the argument on this. Judy?

MISS WILENSKY: I think the general argument

was, by "unanimous" was meant simply that until there was recognition of something to solve the situation, something on the lines of the Fulton-Favreau Formula could be worked out, any change will have to be unanimous; so meanwhile we might as well have unanimous transitional arrangements.

PROF. MEISEL: I can see the political pressure for this. We talked earlier about feeling that in Quebec, for example, these conferences are not deciding anything. Here is a move forward. You are not solving anything, but at least you are taking a half-way step towards a solution.

The question, of course, is whether you can take even that step if you adopted this. I can see their agreeing to this kind of step if you made two assumptions: one, that you could easily find a long-term solution, which is, of course, a very doubtful assumption; and the other one, if you simply put a time limit on it and state that the transitional arrangement will last for five years. This puts the gun at the temple of everybody, and then within five years you have got to find a solution. It may be that this kind of clock ticking away may encourage people to be more flexible. I think this must have been in the minds, surely ---

DEAN LEDERMAN: This is what Professor Watts said took the West Indies Federation apart

precisely, putting a time limit.

DR. FORSEY: We make the requirement of unanimous consent for a period of five years for any amendment.

PROF. MEISEL: I am not saying this is what we should have; I am trying to say what underlines this type of argument, and this must be the only kind of justification you can have.

DR. FORSEY: If you did that, there are two things that would probably happen. In the first place, the Province of Quebec, from which now the real pressure for amendment comes, would probably say: "To hell with it. Are we going to be held up for all that time, or whatever period it was, until all these moody Western premiers can prepare what they want?"

In the second place, if you did get agreement on this, then, in the course of that time, you might very easily establish a strong inertia against changing that formula to anything but that formula, it seems to me. I think you run the two contrasting dangers.

PROF. MEISEL: I think that is true.

DEAN LEDFRMAN: Quebec feels that the Fulton-Favreau Formula, no-one else, the Fulton-Favreau Formula did all this.

MR. STEVENSON: I think one of the reasons for this, too, is certainly mentioned by Mr. Robarts and several of the other premiers: that is the

feeling by those who were involved in the earlier discussions on the Fulton-Favreau Formula, that as a test of whether or not agreement on anything is possible in constitutional reform, one should make one more stab at the amending formula.

Now, the opposite argument, of course, is the one that can be very legitimately made, that you could not or cannot very easily agree to an agreement on the amending formula until you know what kind of provisions you are likely to agree on on the Constitution; but nevertheless Mr. Robarts in his letter to Mr. Trudeau last November about the agenda for the December -- later postponed to February -- conference, suggested that the amending formula be put on the agenda even though it had not been discussed among the officials. This was the same position taken by two or three of the Western premiers. So I think there is some pressure to try to deal with the amending formula even before one comes to it in the normal order of constitutional review.

MR. GREATHED: "How" before the "why".

DEAN LEDERMAN: My position is still as stated in volume 1 of the papes of this Committee. If you use the Fulton-Favreau Formula for bringing the Constitution home, internally the Fulton-Favreau Formula is capable of conferring more flexibility if this unanimity principle is

used to do so, and there is nothing transitional about it.

I suppose we have to use the Fulton-Favreau Formula part 1 and pretend we are not using it. I do not see any way of getting away from it. If the Quebec people vetoed it, and it was the Union Nationale and the Liberal Party both that vetoed it, this was one point on which they did not differ.

So if it is going to be politically possible for Quebec to agree, you should be able to change the Fulton-Favreau Formula a little so that you can say it is not the same thing, but essentially it will have to be the same.

PROF. BRADY: I think to emphasise the unanimity here, it is desirable. I do not see how you can get an amending formula without. Actually the interesting thing is that Quebec in the first discussions in 1960-1961 were strongly ---

PROF. CREIGHTON: All in favour of unanimity.

DR. FORSEY: Oh, yes.

PROF. BRADY: Wouldn't consider any amendment. In other words, the situation that developed was a peculiar political situation in 1964/65, and the politics of that occasion have determined the attitude of the Quebec Government.

THE CHAIRMAN (Mr. Perry): What is the view as to whether any transitional phase is

required?

PROF. BRADY: I would, of course, eliminate "transitional".

PROF. CREIGHTON: Oh, yes.

PROF. BRADY: We are concerned with establishing an amending formula.

DEAN LEDERMAN: I would go further and say that no transitional stage is possible.

DR. FORSEY: Yes.

MR. GREATHED: May we not just strike that particular proposition and try to meld the one which follows -- well, meld the two that follow into one?

DR. FORSEY: Yes, striking out "transitional" in the next one:

"To work out the details of an

"arrangement which would patriate --- "

PROF. CREIGHTON: "Patriate" is the correct word there.

DR. FORSEY: "Patriate the Canadian Constitution". Then:

"The Fulton-Favreau Formula for

"constitutional amendment should form

"the basis for any future consideration

"of an amending formula".

DEAN LEDERMAN: Yes.

PROF. MEISEL: It will come up later, but is it necessary to refer to the Fulton-Favreau Formula by name? I think that is just asking for trouble.

DR. FORSEY: It may be.

THE CHAIRMAN (Mr. Perry): Couldn't we call it the Lederman-Forsey Formula?

--- Laughter.

PROF. MEISEL: I don't think you are going to get anything if you do that. I think you may ask for the same kind of thing but do not call it the Fulton-Favreau Formula.

PROF. CREIGHTON: What is your proposal instead of it?

DR. FORSEY: Don't say anything. Just tell the Attorneys-General to get together.

Of course, this is another delightful phrase on the next page that since 1964 many of the problems of Canadian Federalism have become clearer.

"And we have been able to consider how
"best to meet the criticisms that did
"arise at that time".

My hat, we have been able to consider all right, but I doubt if the problem has become any less baffling.

I think that most of this might just be dropped out and just the recommendation there for the meeting of Attorneys-General.

PROF. CREIGHTON: What does that:

"Since then, many of the problems of
"Canadian Federalism have become clearer"

mean?

DR. FORSEY: Quebec Government has become much more aggressive and much tougher.

PROF. CREIGHTON: That is what actually has happened.

MR. GREATHED: Well, I think the areas of agreement and disagreement, as a result of the constitutional review, have become a lot clearer. I think we certainly know in a way today which we did not know in 1964, what is bothering a lot of people in this country, by the Government, and I think this is really what was behind this particular comment.

PROF. CREIGHTON: There were not any criticisms, apart from the criticism of Quebec, were there?

MR. GREATHED: No. Nevertheless, Quebec was a factor and perhaps the factor.

PROF. CREIGHTON: Does this sentence imply that we know better now how to meet the criticism of Quebec? If that is what we are going to meet I am not in favour of it.

DEAN LEDERMAN: I am not even in favour of not calling it the Fulton-Favreau Formula. That is what it is; everybody knows that is what it is. Who are you going to fool by pretending it is not?

THE CHAIRMAN (Mr. Perry): I wonder if we could just step back. It seems to me what we are really doing is rejecting the need for tran-

sitional provisions entirely, and simply urging that the Fulton-Favreau Formula be adopted, and almost gratuitously suggesting that the ministers and Attorneys-General get together and work on this.

DR. FORSEY: The only thing, I think, to be said for dropping the mention of the Fulton-Favreau Formula is what John Meisel has already said, which I think could be put another way.

My recollection is that during the interval between the Quebec conference and the Westminster Palace Hotel conference, the attitude taken by the Governments of Nova Scotia and New Brunswick was: "We now start over again. We are not committed to the Quebec scheme". Then when they got to the Westminster Palace Hotel, as Professor Creighton has said so well in his "Road to Confederation", if I remember correctly, they sat down with the Quebec scheme before them as the basis. There was nothing else they could do.

I think if we do not even mention the Fulton-Favreau Formula, they will sit down with the Fulton-Favreau Formula in front of them and the considerations that led to it; they may then have to modify it, but there is nothing else they can do but take that as the starting point.

DEAN LEDERMAN: Not only was the Fulton-Favreau Formula agreed, but the whole White Paper

was circulated to all governments and accepted as an accurate description of the history.

DR. FORSEY: Yes, but I think they are in the same position. You cannot start absolutely de novo; you cannot go back to square one. All this has been discussed, and you simply have to say what changes you thought had to be made in the Fulton-Favreau Formula.

PROF. BRADY: You have to certainly begin where you left off before; and the term "Fulton-Favreau Formula" is a simple way of stating that, after all, a few years ago great pains were taken in a series of conferences to work out a formula. I am inclined to agree with Bill, that I doubt you can avoid reference to the Fulton-Favreau Formula.

PROF. CREIGHTON: It is not simply the effort that went into the Fulton-Favreau Formula, but the effort which began earlier than that way back in 1935 when they made these four original categories.

PROF. BRADY: But you cannot describe this very simply.

PROF. CREIGHTON: No, you cannot, but that is a catch-all phrase about the whole process.

PROF. BRADY: It resulted from previous efforts, and it is the simplest way, I think, to describe what resulted. I don't know what other name.

PROF. MEISEL: Why not go back to the thirties, and say you are going back?

PROF. CREIGHTON: To an effort which certainly began systematically with that committee of officials in 1935.

PROF. MEISEL: That is it. I know this may be just picking insignificant details and maybe it is tactics of the negotiating process, but nevertheless I think that the phrase "Fulton-Favreau" has such an emotional content that it makes it difficult for politicians, say, who have earlier said, "No", to it, now to come and start with it when they have to defend it in public.

MR. STEVENSON: Mr. Chairman, Ontario has one proposition in the tables on this in Ottawa entitled "An amending formula must be part of the written Constitution of Canada." The last sentence of the explanation was:

"Consideration should be given to
"re-examining the principles contained
"in the draft Act to provide for the
"amendment in Canada of the Constitution
"of Canada. October 1964".

The words "Fulton-Favreau" do not appear, but everything else.

PROF. MEISEL: I prefer that, frankly.

DEAN LEDERMAN: That will do it.

DR. FORSEY: I think Professor Meisel has a point. From what I know of Quebec opinion,

I think it might be an emotionally charged pair of words, and there is enough emotional charge in the air now without adding to it.

I think the thing that Donald Stevenson mentions is fine, because then somebody has to come along and say, "That means the Fulton-Favreau Formula", and then you say, "Well, blah blah blah". It doesn't pull the trigger in quite the same way.

DEAN LEDERMAN: That would be all right. That is the proper description in the White Paper.

MR. GREATHED: Yes, that is the exact title.

PROF. BRADY: Incidentally, on page 3 (I have numbered my pages):

"Constitutional review should be
"undertaken as a unit".

What is the meaning of a unit there?

MR. GREATHED: I have queried that. This has been taken out.

DR. FORSEY: Where is that?

PROF. CREIGHTON: Alec's page 3.

DR. FORSEY: Yes, I see.

MR. GREATHED: We have taken that page 3 completely out, as I understand it.

THE CHAIRMAN (Mr. Perry): I was just wondering, it seems to me this transitional page had very little significance any more, because it was only as a means of getting to the Fulton-Favreau Formula. We now suggest that we go there

directly.

DR. FORSEY: And don't mention the name.

THE CHAIRMAN (Mr. Perry): Yes. That is a fine Canadian tradition, anyway. You can come as close to a pig as his squeal in a lot of things, but you mustn't mention the name of any person in the Constitution.

THE CHAIRMAN (Mr. Perry): Fulton by any other name is just as sweet.

DR. FORSEY: But sweeter still with no name attached to it.

THE CHAIRMAN (Mr. Perry): But what about the piece of advice that we give the Ministers of Justice and Attorneys-General, is this worth putting in?

PROF. MEISEL: This is page 4, is it?

THE CHAIRMAN (Mr. Perry): Yes, according to the Brady system of enumeration.

DR. FORSEY: The one that has no explanation attached to it at all.

DEAN LEDERMAN: I don't seem to have it.

DR. FORSEY: There, you have it there:

"A special committee of Minister of
"Justice and Attorneys-General should
"meet as soon as possible ... "

DEAN LEDERMAN: Take out the word
"transitional".

PROF. CREIGHTON: That is right.

DEAN LEDERMAN: Then it is completely innocuous, isn't it?

THE CHAIRMAN (Mr. Perry): To me it is just a bit of gratuitous advice which seems so obvious.

DR. FORSEY: It might mean, though, that we hand it over to the Privy Council office.

PROF. BRADY: I would think, Harvey, from your experience in the Civil Service, gratuitous advice has a certain utility.

THE CHAIRMAN (Mr. Perry): It is the very best kind, Alec.

--- Laughter.

We will leave it to the Secretary to see how they want to re-arrange those two pages, but we drop the transitional page. What have we got here now: "Any suitable Canadian amending formula", etc.

PROF. CREIGHTON: Have you dealt with the one on page 5? Have you passed beyond that now?

THE CHAIRMAN (Mr. Perry): This would be my next page in order.

PROF. MEISEL: Fulton-Favreau Formula for constitutional amendment ---

DEAN LEDERMAN: "The amending formula
"should recognise that different types
"of constitutional ... "

Is this the one?

MR. GREATHED: Yes.

PROF. CREIGHTON: I don't like this sentence on page 2 of page 5.

THE CHAIRMAN (Mr. Perry): You want to change some of the notes?

PROF. CREIGHTON: "Since then, many
"of the problems of Canadian federalism
"have become clearer."

MR. STEVENSON: Scratch it.

PROF. CREIGHTON: "And we have been able
"to consider how best to meet the
"criticisms that did arise at that
"time."

I don't think that is true.

DR. FORSEY: I thought we were dropping mention of the Fulton-Favreau Formula and this page went out of the window anyway.

PROF. CREIGHTON: The whole page.

MR. GREATHED: I think what we might do is take the substance of that proposition and meld it with the one on the Committee and so on, making sure we do not use the term "Fulton-Favreau".

THE CHAIRMAN (Mr. Perry): So we go on:

"Any suitable Canadian amending formula
"should recognise ... "

DEAN LEDERMAN:

"... that different types of
"constitutional matters may require
"different methods of amendment".

I object strongly to the explanation under No. 2. It is a non sequitur, and if it were not it would be hopelessly rigid.

PROF. CREIGHTON: Well, that is not true, because there are sections ---

DEAN LEDERMAN: It says:

"No matter included in the written
"Constitution shall be capable of
"unilateral amendment by any jurisdiction.
"Those matters which are important
"enough to be part of the written
"Constitution of a country should be
"harder to change than an ordinary
"statute".

I don't accept that at all.

PROF. BRADY: Neither do I. How about the constitutions of the provinces?

DEAN LEDERMAN: Yes, how about the election acts.

PROF. BRADY: They are statutes, and to that extent written.

DR. FORSEY: There may be all sorts of things in the Constitution of the central authorities that do not really concern anybody but the central authorities.

DEAN LEDERMAN: The Fulton-Favreau Formula itself makes it quite clear that the Parliament of Canada can do certain things where the Constitution of Canada is concerned by its own

statute; that the provinces can do everything they can do now with their own constitutions by their own statutes.

PROF. CREIGHTON: These are always two categories.

DEAN LEDERMAN: If you leave 2 in you do indeed have to take out ---

PROF. CREIGHTON: That is all wrong.

PROF. BRADY: I think this comes, too, from a certain amount of confusion as to what the term "constitution" means, but actually it has a broad sense and a narrow sense.

MR. CALLAGHAN: I think you are talking about the constitutional document in the sense of representing the B N A Act, as opposed to the overall constitutional document including every piece of legislation.

DEAN LEDERMAN: But the B N A Act has several sections which say:

"Until Parliament otherwise provides".

MR. CALLAGHAN: I have nothing to do with it, but I just thought, reading it, that they were referring to the one document that has your fundamental rights and so forth in it.

MR. STEVENSON: Mr. Chairman, in the last set of propositions which I think were discussed here last time we met and which was part of the collection presented in December, this proposition you may remember:

"Any matter included in the written
 "Constitution should not be capable of
 "unilateral amendment by any jurisdiction'.

Then the explanation:

"The written Constitution of a
 "federal country should outline the nature
 "of the political system and describe
 "the institutions of government and
 "establish the distribution of powers.
 "These matters are placed in the
 "Constitution to ensure their relative
 "permanence, that is, to ensure they
 "cannot easily be altered. Those
 "matters which are less important and
 "which can be amended by one jurisdiction
 "should not be included in the written
 "Constitution".

PROFESSOR FOX: They are not necessarily
 less important because they only concern one
 jurisdiction.

PROF. BRADY: No.

PROF. CREIGHTON: Then your first
 statement here is negated by this sentence:

"Any suitable Canadian amending formula
 "should recognise that different types
 "of constitutional matters may require
 "different methods of amendment."

DEAN LEDERMAN: One of the methods of
 amendment is an ordinary statute.

PROF. CREIGHTON: By the federal parliament or by the provincial legislature.

DR. FORSEY: You have actually got in the B N A Act now, which is the most fundamental constitutional document, you have got not only the clause that Professor Lederman referred to which says: "until the Parliament of Canada otherwise provides"; but you have also got 91(1) which gives the Parliament of Canada very wide powers to change a great deal in the British North America Act, and it has already exercised one of those powers by limiting the term of office of a senator, placing the age limit on the senators.

DEAN LEDERMAN: The last proportional redistribution of representation between provinces was by ordinary statute by the federal parliament.

DR. FORSEY: Exactly.

PROF. CREIGHTON: So this is contradictory, this page.

MR. STEVENSON: I would take it, Mr. Chairman, that the sense of the meeting is to also retract or remove the previous proposition that I just read.

DR. FORSEY: Or clarify it in some way.

DEAN LEDERMAN: That proposition that you just read is very different from this.

PROF. CREIGHTON: The proposition at the top here is all right.

DEAN LEDERMAN: That one is all right.

PROF. CREIGHTON: The thing that follows down below is quite contradictory and it is false, too.

THE CHAIRMAN (Mr. Perry): So we agree with the proposition but not the reasons given.

DR. FORSEY: You might get in the written Constitution various provisions for the organs of the central government -- executive, legislature and the judicial, and it well might be that these would be part of your fundamental document; but they are part of your fundamental document for the amendment of which they only require a statute of the Parliament of Canada, unless you put in something about a joint session of the two Houses or two-third majority or something or other. You could put in all sorts of things, but you could perfectly well have things there that were essentially no concern of the provinces and require no kind of provincial consent.

Take a thing like the quorum of the House of Commons. If you happen to have that in the written Constitution, it would be ridiculous to say you would have to get the consent of one, two, three, five or ten provinces in order to change it from twenty to twenty-five. I do not think that is a good thing to put in the written Constitution, but there are various things such as

that the Parliament of Canada shall consist of the Queen, the Senate and the House of Commons. Now then, suppose you want to abolish the Senate. It might be that this could be considered, as it was apparently by the St. Laurent government, as something which could be done by unilateral action of the Parliament of Canada itself, and you preclude that kind of thing by that second paragraph.

PROF. BRADY: In other words, your explanation has some inaccurate statements here, but this fact suggests the necessity for a little more elaborate explanation of such a matter, if you have any statement at all on this.

DR. FORSEY: There are certain things you certainly do not want to have changeable by a single jurisdiction. This is quite clear, and everybody would admit that. There are some where you might say it is necessary to have the consent of the provinces who are concerned -- like that business of returning natural resources to the western provinces in 1930. There are others that might require consent only of the particular province concerned, as in the Fulton-Favreau Formula.

THE CHAIRMAN (Mr. Perry): There seem to be two contradictions -- one, that the main proposition is contrary to the Fulton-Favreau Formula and is also contrary ---

PROF. CREIGHTON: No, it is not. The first proposition is fine.

THE CHAIRMAN (Mr. Perry): I'm sorry.

MR. CALLAGHAN: It is the explanation.

MR. GREATHED: I think we will just take Professor Brady's suggestion and on the basis, Mr. Chairman, of the remarks other people have made, simply provide a more elaborate and detailed explanation.

DEAN LEDERMAN: The thing I mean by a non sequitur is that you cannot say, as a general principle of constitutions or political systems, that the more important it is the harder you make it to change. That is the thing that frightens me. The opposite could be true of something, that the more important it is the more readily you want to be able to change.

THE CHAIRMAN (Mr. Perry): Could we go on then to the next one in my list -- Distribution of Powers.

MR. STEVENSON: One more.

DR. FORSEY: "Any suitable Canadian amending formula should provide for limited delegation ..."

Is that the one?

MR. GREATHED: Yes, that is the one.

THE CHAIRMAN (Mr. Perry): But this is under "Distribution of Powers".

MR. STEVENSON: I am sorry.

THE CHAIRMAN (Mr. Perry): That is all I said.

DR. FORSEY: This is a transitional page between amending procedures and distribution of powers.

MR. PERRY: We are getting into distribution of powers now.

MR. GREATHED: It becomes very complex, because sometimes you find you have got a particular point which you know is going to be put into several categories when it is submitted to the Continuing Committee, and this is the only reason. This one clearly covers these two subjects, and so we included under those two.

PROF. FOX: There are two points here, Mr. Chairman. I am not clear why the explanation is made to turn upon regional economic disparities. Is there some reason for that?

MR. GREATHED: I think this was simply an illustration. Perhaps it could be made clearer as an illustration.

DR. FORSEY: It seems to me a non sequitur.

PROF. FOX: Well, I could not see how the transfer of marketing procedures, for example, to one or other of the provinces would have much to do with economic regional disparities.

Incidentally, on this business of the delegation between jurisdictions, in the Fulton-

Favreau Formula have you noticed that it is easier, under the formula for the provinces, to delegate their power to the Federal Government than it is for the Federal Government to delegate its power to the provincial governments? In other words, it is not an equal, two-way street, as it were.

DR. FORSEY: What particularly?

PROF. FOX: If you look at it, I looked at it in some detail and I spent a long while looking at it. You will see it says under "Delegation of provincial powers to the Federal Government" that normally four would be in agreement but that it is possible for the Federal Government to declare it to be in the interests of Canada. One province can delegate its power to the Federal Government, correct?

DR. FORSEY: No, I don't think that is quite accurate.

DEAN LEDERMAN: I think it goes this way, that if the provinces wish to delegate powers to the Federal Parliament, then provided four of them are willing to do so they can do so, and it affects only those four. Now, if three want to do it and the other seven are consulted and say they do not care, three can do it. If two want to do it and the other eight are consulted and say they don't care, two can do it. You get down to one doing it this way.

Going the other way, four provinces must consent to a Federal delegation to four provinces or you cannot do it at all -- it is four or nothing.

PROF. FOX: In other words, the Federal Government cannot delegate powers to Quebec alone.

DEAN LEDERMAN: No.

PROF. FOX: With Quebec's consent only.

DEAN LEDERMAN: That is right.

PROF. FOX: But Prince Edward Island could delegate power to the Federal Government if Prince Edward Island and the Federal Government agreed.

DEAN LEDERMAN: And the other nine provinces.

DR. FORSEY: But the statute would have to recite that the governments of all provinces had been consulted by the Government of Canada.

DEAN LEDERMAN: Yes.

DR. FORSEY: And had declared that they had no objection.

PROF. CREIGHTON: That is exactly the same, Paul.

PROF. FOX: No, I don't think it is the same.

DR. FORSEY: No, it is not quite the same. The other thing is, of course, the power of the provinces to delegate is limited to certain

heads of Section 92, if I remember correctly: and the power of the Parliament of Canada to delegate is in no way limited.

DEAN LEDERMAN: That is right, as to heads.

DR. FORSEY: As to heads, yes.

PROF. BRADY: Of course, Federal Government, the fact it makes the decision, its agreement has to be obtained, and it is not going to be an easy one.

DR. FORSEY: I just meant there was a wider scope. They didn't say heads 4, 7 and 8, or something like that; where when it is the other way around they say heads 13, 16, 9 -- and what is the other one, Prisons?

DEAN LEDERMAN: Yes, the big one isn't there -- Property and Civil Rights.

DR. FORSEY: 13, 9, 16, and a fourth one, 6, I think.

DEAN LEDERMAN: This is the Fulton-Favreau Formula, Part 2, and I agree with Mr. Trudeau; I am opposed to it.

DR. FORSEY: Well, you explained, as I recall it, Bill, over and over again to us that the desirable results of this can already be obtained through administrative delegation.

DEAN LEDERMAN: Yes.

DR. FORSEY: And the legislative delegation would lead to a variety of undesirable

results.

DEAN LEDERMAN: Legislative delegation can mean, I think, Eugene, that we get all the things on which you did one of your principal papers. You can get an intolerable degree of special status for one province if you go all the way with free legislative delegation.

DR. FORSEY: Except that it is revocable and you have this four provinces business attached to it.

DEAN LEDERMAN: Yes. Under the Fulton-Favreau Formula, my conclusion on Part 2 was that it was so difficult that it would never work; or if it would work it would be undesirable because you are handing around the primary legislative powers. To deal at the administrative level to administer a securities scheme or administer a marketing scheme, something much more specific, that is different; but to hand over property and civil rights, holus bolus to the Federal Parliament for Prince Edward Island is making a new thing of Confederation.

MR. STEVENSON: Effectively doing it now.

DEAN LEDERMAN: Unilateral amendment.

PROF. BRADY: I think, incidentally, following on that, the explanation should bring out the significance of legislative delegation in the administrative field.

DR. FORSEY: I think the intention probably of the people who drew up the Fulton-Favreau Formula was, by Part 2, to meet the criticism that Part 1 was unduly rigid. I think that was the intention, and I applaud the intention, but I am pretty well persuaded by what Bill has said and by what I have heard from other lawyers, I might say, that it is a dubious remedy and it might create a good many more problems than it solves; and that the really essential things that need to be dealt with by way of delegation you can probably deal with pretty adequately by the administrative delegation which the Willis case sanctioned.

THE CHAIRMAN (Mr. Perry): Does that suggest that we are really making a reservation to our approval of the Fulton-Favreau Formula, that we are not in favour of delegation?

PROF. BRADY: I think the Fulton-Favreau Formula in the former discussion was with respect to the amending procedure, not delegation.

DR. FORSEY: It was the basis, anyway. We didn't say, "Swallow it holus bolus".

THE CHAIRMAN (Mr. Perry): Perhaps we had better be a little more specific.

DEAN LEDERMAN: The earlier propositions all relate to Part 1, not to Part 2.

THE CHAIRMAN (Mr. Perry): Not being that familiar with the Fulton-Favreau Formula, it

is all one formula as far as I am concerned.

PROF. CREIGHTON: It says the amending formula in the earlier proposition.

DEAN LEDERMAN: Delegation is not mentioned in that formula sense.

PROF. BRADY: Incidentally, it is just as well to recognise, unless opinion in the provinces has changed lately, that there will be some provinces which will express again the need for delegation -- the smaller provinces in particular, Nova Scotia was very emphatic on that.

As a matter of fact, you remember in the Confederation of Tomorrow Conference the Attorney-General of Nova Scotia gave a speech on the matter. That is an old scene for Nova Scotia leaders, from Angus McDonald before the Second World War down. Prince Edward Island, Manitoba seemed to be very keen also.

DEAN LEDERMAN: John A.Y. Macdonald is still there.

PROF. BRADY: It is as well to remember that. At least, if you don't put in anything like a proposition, you had better here have some data on the intricacies of delegation. It seems to me a matter that should be investigated and a little memo appear on it specifically.

DR. FORSEY: I think so.

DEAN LEDERMAN: I think the other point is that if anybody thinks this is a solution or a

potential solution of the problem of special status in one province (Quebec or any other) it is not because of the point Paul has made.

PROF. FOX: I have been re-reading this, and I think the position Bill and I were developing is accurate. It says that all the Federal Parliament has to do is to consult the provinces; it does not say it has to get their consents. Then it declares it is in the interest of Canada, and it can go ahead and make the arrangement with one province regardless of the attitude of the other nine.

DEAN LEDERMAN: Regardless of the attitude?

PROF. FOX: Yes, it says only the provinces that are involved in the delegation have to consult.

DR. FORSEY: That is from the province to the Dominion, is it not?

PROF. FOX: No, that is from the Dominion to the province.

DEAN LEDERMAN: But it goes on and says: "... and that the enactment of the "statute is of concern to fewer than ..."

PROF. FOX: Yes, fewer.

DEAN LEDERMAN: Now, if Saskatchewan says, "This proposed delegation to Nova Scotia isn't of concern to us and we do not want to see it happen --- "

PROF. FOX: Well, it is whose concern, though. It says: "... of concern to the province that enacted it".

DEAN LEDERMAN: "... and that the
"enactment of the statute is of concern
"to fewer than four provinces"

The provinces are declared to be concerned.

PROF. FOX: Are declared to be concerned, yes, isn't that the way you read it?

DR. FORSEY: It is a different situation from the Province to the Dominion.

DEAN LEDERMAN: I think the previous sentence requires the province to say positively that it does not care, or else it cannot go forward.

DR. FORSEY: It wouldn't touch the kind of special status that has been talked about by Quebec, because it is a delegation from the province to the Dominion. You see, it starts, "Thingummy of Section 92".

MR. STEVENSON: Although from the proposition we are looking at it does not necessarily have to follow the terms of the Fulton-Favreau Formula; it only refers to a limited delegation power.

DEAN LEDERMAN: You see, the Province of New Brunswick may say: "We not only do not want delegation of Federal marketing power to our Potato Marketing Board, but we most strongly object to the delegation to the Marketing Board of Prince

Edward Island who grow potatoes, too.

DR. FORSEY: This applies, surely, to a transfer from the province to the Dominion.

Look at the beginning, the head:

"... notwithstanding anything in
"this Act".

PROF. FOX: Parliament may make laws in relation to these matters, but it has not got the power to make this law unless these four provinces have agreed or it is declared by the Parliament of Canada that the Government of Canada has consulted with the governments of all provinces and that the enactment of the statute -- presumably it is the Government of Canada that declares enactment of the statute is of concern to fewer than four (this would be, say, one) and the province or provinces so declared to be concerned (which presumably is the one) had under the authority of their legislature consented to the enactment of such an Act. So the Federal Government and one province could be involved.

DR. FORSEY: Quite, but look at what it says at the beginning:

"Notwithstanding anything in this or
"in any other Act, the Parliament of
"Canada may make laws in relation to
"any matters coming within the classes
"of subjects enumerated in classes
"(6), (10), (13) and (16), of Section 92

"of this Act."

It will then be able to legislate on these provincial matters, and the delegation having taken place from the province to the Dominion.

PROF. FOX: Yes, but I say it is easier to go that way: one province can delegate to the Federal Government, but the Federal Government cannot delegate to one province without four provinces agreeing, right?

DR. FORSEY: Yes.

DEAN LEDERMAN: It must have four before it can delegate at all.

PROF. FOX: Right, so it is easier for the provinces to delegate to the Federal Government.

DEAN LEDERMAN: That is right, but we are differing on another point; we are differing on the delegation from the province to the Federal Government. I am saying that one province alone cannot delegate to the Federal Government unless the other nine say, "Okay, we don't care".

PROF. FOX: That is not the way I read it.

DEAN LEDERMAN: Because it says they must consult and they must declare it is of concern only to --- Now, that declaration is false if a province says, "We are not going to delegate and we don't want anyone else to delegate".

MR. CALLAGHAN: Surely it is the judgment

of the Federal Government that is concerned with one province or two provinces; it is their choice. It is like when they declare any work to be done for the general advantage of Canada, when some of the provinces may think it is not but they say it is and that is the situation.

DR. FORSEY: But the Government have to do the consulting, but Parliament would have to declare, and the chances of Parliament declaring it if it was patently false are surely very small.

MR. CALLAGHAN: That is right, but it is in a gray area there. It is judgment of Parliament, not of the Legislature of Ontario; Parliament is going to say: "We think it is of concern or no concern".

DR. FORSEY: And has consulted everybody.

PROF. FOX: Yes, having duly consulted and having found it is not of concern to ---

MR. CALLAGHAN: Yes.

DEAN LEDERMAN: Nine provinces could be violently and loudly objecting, and they could still declare it in a Federal statute?

DR. FORSEY: Parliament could still lie and the Courts would not go behind the word.

PROF. FOX: I don't know why they have gone to the trouble of spelling it out this way and not making it parallel to the other directional flow, unless there was that intent behind it.

PROF. BRADY: It may be the law, but I

don't think it is politically feasible.

THE CHAIRMAN (Mr. Perry): I wonder if we can get to our main theme.

PROF. BRADY: I think some of those who agreed to the formula then felt that. They said, "This won't be workable, but still --- "

THE CHAIRMAN (Mr. Perry): Then as an Advisory Committee, is it our advice that the Secretariat drop this particular proposition?

MR. CALLAGHAN: I should not be butting into this particular area, but may I just say one thing? It strikes me, when you are dealing with delegation of legislative power, it is pretty hard to rule this out before you define or work out your distribution of powers; because if you get into the area of concurrent powers -- and I think this is probably where I could see the delegation of legislative power being most operable; but if you decide that certain powers should be characterised as both Federal and local interest so that you are going to confer a jurisdiction on both orders of government and deal with it, it might very well be, to make it workable, you will need delegation of legislative powers. So I think before making any final decision on a proposition like this, you should not decide it until you have decided in your own minds what you are going to suggest by way of distribution of powers.

DR. FORSEY: I should have thought if you made it concurrent power the delegation could not operate.

MR. CALLAGHAN: It just might be that if a power is given concurrently in certain areas for certain provinces or certain regions of the country, to make it an effective operating power, it might be that you need a delegation such pooling of wheat or selling of wheat in the west, things of that sort crossing provincial boundaries.

DR. FORSEY: You concurrent clause would have provision for paramountcy of one law or another. Are you suggesting there could be delegation of paramountcy?

MR. CALLAGHAN: No, it may be paramountcy is not acceptable in some interests in your fields of concurrent powers. I just imagine it would be very difficult to say: "We will deal with this immigration as concurrent power, but we will give the Federal Government paramountcy," and I can see certain parts of the country saying, "I don't think it is right".

DR. FORSEY: Well, it seems to me you have to make up your minds one way or the other which is paramount; otherwise you will have an irreconcilable conflict of laws. It also seems to me that you might then shove in something about delegation so that in effect the paramountcy could be delegated. The paramount jurisdiction could

say: "All right, in this case we will concede your right in the matter".

MR. CALLAGHAN: But doesn't this demonstrate the point that maybe you should not rule a proposition like this out until you have decided how you are going to deal with your distribution of powers?

PROF. CREIGHTON: I don't think we should rule this out.

DEAN LEDERMAN: I think problems of delegation, whether there should be delegation and on what terms, how much of it, this should be considered in the constitutional review, I agree with that.

MR. CALLAGHAN: I thought you were going to strike down the proposition.

PROF. CREIGHTON: I don't think so.

DEAN LEDERMAN: To me concurrency of power excludes delegation; you don't need it if you have got concurrency of power.

MR. CALLAGHAN: I agree, that is one point of view, but I think there is also equal argument that it might very well be the field you do the delegation in, because it might be the larger provinces can deal with a particular matter whereas the small provinces cannot; and in order to have, say, marketing scheme or something like that in the Atlantic Provinces, it might be necessary for them to delegate certain aspects of

marketing to the Federal Government, whereas Ontario and Quebec maybe would have a concurrent legislative power for the marketing of certain vegetables, and wouldn't want to delegate it.

DR. FORSEY: I still go back to the point that you cannot have concurrent power without assigning paramountcy somewhere, it seems to me; and if you want also to bring in the principle of delegation, then it will be a delegation of paramountcy. Conceivably you could do that, I should have thought.

MR. CALLAGHAN: All I am suggesting is that I think it is an area that should be discussed or considered.

DR. FORSEY: I think it should be discussed all right, but here you have got:

"An amending formula should provide

"for ... "

It seems to me if you say the question of whether an amending formula should provide for it is one that needs discussion, that is another thing altogether. This is an affirmative statement that there should be some delegation provision in the amending formula. This, as I understand it, is the thing that Bill is jibbing at, and I am rather inclined to jib at it, too. I am rather disinclined to foreclose decision on the thing by saying, "Yes, there ought to be a delegation in part".

PROF. CREIGHTON: That is just a small adjustment.

DR. FORSEY: I like the delegation part of the Fulton-Favreau Formula, and I have defended it publicly; but on listening to the opinions of people better informed and more widely than myself, I began to have doubts, and the doubts have not been entirely cleared up by anything I have heard even from you, Mr. Callaghan. I am a little inclined to think now that I do not know enough about it to make up my mind one way or the other, but that I would be sorry to see the Province of Ontario commit itself affirmatively now to saying there ought to be, there must be.

THE CHAIRMAN (Mr. Perry): So we revise this really to support consideration of the question rather than support of the principle.

MR. CALLAGHAN: That would be better.

DR. FORSEY: Perhaps I am very vehement and I do not want to hog the show, but this seems to be to be a distinction that would leave the question for consideration ---

THE CHAIRMAN (Mr. Perry): You are quite right. We were making a commitment here.

MR. CALLAGHAN: That is right.

MR. STEVENSON: I think we probably do need a little more specific research about the problems of legislative delegation. I know there has been a fair bit of general sympathy for such

a provision within the Government among various ministers that I have heard, but undoubtedly without giving the matter much consideration.

MR. CALLAGHAN: I think in a way you are committing yourself to it. My point is before committing yourself it would be better to decide on the distribution of powers. Then you decide: are we going for legislative delegation?

PROF. BRADY: I think, following on that point, delegation should not be linked too closely with the amending matter. I think delegation is a thing that could come later when you have settled down the distribution of powers and the amount of concurrency and so on that you introduce. I do not think it is so essential logically to bring it up alongside of the amending procedure.

DR. FORSEY: Yes, really what you should have here, even if you are going to commit yourself, is not "any suitable Canadian amending formula should provide ... " but, "the Constitution should provide ...". Even there I think possibly the thing needs more consideration before the Government of Ontario gives even a limited commitment to the principle. Then the explanation, it seems to me, does not seem to explain much in the first place but it seems to me in those circumstances it explains even less.

DEAN LEDERMAN: We could find ourselves with a provincial marketing board trying to compete with a federal marketing board marketing British Columbia and Nova Scotia apples.

MR. STEVENSON: That is the current situation with regard to trade missions.

THE CHAIRMAN (Mr. Perry): I think we have pretty well beaten that subject to death.

PROF. FOX: You ask for advice and you get it.

PROF. CREIGHTON: This is the first justification of a Federal Government; if all else fails, it must do that.

DR. FORSEY: The usher that takes up the collection.---

PROF. CREIGHTON: And distributes it. That this should be put first is almost incredible.

THE CHAIRMAN (Mr. Perry): One would assume this was an error.

PROF. CREIGHTON: I would think so.

THE CHAIRMAN (Mr. Perry): Shall we shift them?

DEAN LEDERMAN: I see now why the pages were not numbered.

MR. STEVENSON: I had it in the other order.

THE CHAIRMAN (Mr. Perry): You just arrived in time. We are just going on with the

financial thing.

--- Mr. McDonald rejoined the meeting and took the Chair.

THE CHAIRMAN: You are just up to the financial, and I am just back from the financial.

MR. PERRY: As a result of an outburst of indignation against this one being first, we put it second.

PROF. FOX: "The Federal Government must retain the responsibility ... ". Page 8, if you are numbering them.

THE CHAIRMAN: I see.

MR. STEVENSON: I think it should be borne in mind that most of the next set of propositions relate more specifically to the spending power than to the distribution of powers generally, and that is why the balance or imbalance may be what it is.

PROF. CREIGHTON: I think that ought to be first. It shows which way their thoughts are running.

THE CHAIRMAN: Is someone playing tricks on me here?

MR. PERRY: No, we have done that and that.

THE CHAIRMAN: We are at the one about unconditional transfers, are we?

MR. PERRY: Distribution of powers -- "The Federal Government must retain the responsibility ...".

THE CHAIRMAN: All right.

PROF. CREIGHTON: We just suggested how suitable it was for the other to come first in the Ontario submission, Mr. Chairman.

PROF. MEISEL: Mr. Chairman, there are a number of these raise the same kind of problem in my mind. These propositions, presumably, are at this stage largely considered as the kind of things that Ontario might put forward as the sort of thing it would like to see adopted; but we should also think about the possibility that a real impasse develops between what Ontario would like and, say, what Quebec would like. Let us take those two, for the sake of simplicity, as the two protagonists there, and we find that these negotiations go on and on, and we really get into a very serious conflict of opinion. We have to face the question of whether we think we must insist on the kind of position that we have adopted, or be prepared to break up the country or see it broken up. In other words, at some point this choice has to be made.

PROF. BRADY: Have a coffee break at that point.

PROF. MEISEL: You can't forever have coffee breaks. I think there are two considerations that we have to have. One is: what do we want to put forward as our first negotiating proposals which we would like to see adopted;

secondly, how far are we prepared to depart from the kind of position that we would ideally like to see?

In some of these proposals the Ontario position is clear, of course, that we want to see a strong central government which has enough powers to maintain some kind of a national policy in a number of areas. It may be that the Quebec Government is not prepared to accept this kind of proposal, and that in their minds the alternative to provincial power is a power which consists of ten provinces getting together and developing some kind of compromise policies which will represent the Canadian position so that the Canadian interest is no longer primarily defined by the Federal Government, but by a series of negotiations among ten provincial governments you have a real confederacy.

I think that these propositions here -- with which, by the way, I agree -- are propositions which assume the first alternative, namely, a strong central government. I think at some stage we have to be prepared to either say: "We are not willing to live in a country which does not have this kind of central government", or that we are willing to accept some kind of watering down of this principle. It seems to me that at some point the Ontario Government has got to decide how far it is willing to pull back if it must.

DR. FORSEY: If we are not prepared to accept this, then we should fold our tents like the Arabs and silently steal away to the scrap heap of history.

PROF. MEISEL: But if you do that I think that should be a conscious decision and not arrived at at the last minute when we find we have reached a real impasse. I think this is something you have got to decide beforehand.

DR. FORSEY: I think this would be the overwhelming decision of the people of Canada, outside the Province of Quebec. It would be taken with great regret in many cases, but the other thing is just recreating in Canada the Holy Roman Empire -- neither holy, nor Roman, nor an empire. Why on earth should we try and provide that ancient bird with wooden wings and make it fly again?

I think this is something that just cannot be contemplated at all. If that is what the Province of Quebec wants, then I think the answer is: "Well, good afternoon, gentlemen. You go it on your own. If that is what you want, you are perfectly at liberty to do so", then we will have to do some hard bargaining about what happens to some common property and that kind of thing. This other thing is totally unworkable, totally unrealistic to the whole development of the modern world and totally impossible in a modern, complex, technological society, and there is no reason to

believe that it would be in the interests of the rest of the country at all. It might be more in our interests then to give up the whole Canadian experiment all together and become part of the United States, or even some larger unit. I don't know whether it would, but I think we have to consider it solely in the light of our own interests as the remainder of the country; but to be dragged around in this kind of multiple version of the Holy Roman Empire -- no! Surely no Government of Ontario with the self-respect of a half-grown tadpole could contemplate making any concession on this matter.

MR. PERRY: I think you are almost on record here, aren't you, as favouring a central government, certainly, as I recall it, with enough power to have general direction of the economy. It seems to me you have already said this several times.

THE CHAIRMAN: I think we have said it several times, and the key point, however, is the interpretation of the phrase, "sufficient for the purpose".

PROF. CREIGHTON: To my way of thinking, this is the irreducible minimum of the Province of Ontario, and it ought to stick by it. If it doesn't, it might as well give up the whole thing right from the beginning.

DR. FORSEY: Besides, if you contemplate

the other thing, you will not have any question of what the Federal Government will retain the responsibility for: there will not be any Federal Government, there will be just sort of Polish medieval diet with liberum veto. I am getting far into history, but maybe you would have it.

THE CHAIRMAN: Is there any dissent in this view?

PROF. BRADY: Nobody is disagreeing with this, I gather.

THE CHAIRMAN: I thought I had come into a violent argument, but there is not an argument, I take it.

PROF. BRADY: Harmony.

PROF. CREIGHTON: John is raising the question of what the Province of Ontario ought to do if these propositions were not accepted by the Province of Quebec. He says he wants further consideration of another kind, of a kind of consortium.

PROF. MEISEL: Or a decision that we do not want to even contemplate. What we are really arguing is that it is conceivable that at some stage during these negotiations this position will not be acceptable to the Province of Quebec; that the Province of Quebec will make proposals which do not accept this concept of the central government.

At that point I think we must respond either by saying: "Well, if that is the way it is, there is such a basic disagreement between us that we cannot continue in one country and we had better pack it up"; or we must be prepared to say something else, to accept some level of watering down of the central government. All I am saying is that we must not let this thing creep on us, that this may happen and that we must be prepared for it.

DR. FORSEY: I agree, but it would not be the watering down; it would be the evaporation of the central government and the evaporation of Canada.

PROF. BRADY: Let us consider, there are no statements in the Quebec case that would wholly reject this proposition; at least, I cannot remember them if there are.

PROF. FOX: I think the Quebec brief said as much as this, really.

THE CHAIRMAN: That was my impression.

PROF. BRADY: I thought so.

THE CHAIRMAN: I thought they gave the national economy argument.

PROF. BRADY: Unless there is a great acceleration in attitude of thinking in Quebec and a change in them, I anticipate, as it were, something that would involve Ontario junking ---

PROF. MEISEL: I was thinking that the

thing that prompted this in my mind, and I don't know whether you want to separate it from these various propositions; but in proposition 8, which is the one which says:

"The Federal Government should have
"the power to raise revenues for the
"purpose of making unconditional
"transfers"

etc., the first point in the explanation was:

"Only the Federal Government can
"undertake the responsibility of
"attempting to equalize living
"conditions and opportunities across
"the country"

I have heard some people in Quebec say they would not want to see the Federal Government do this, but they would like to see it arrived at by a conference, a meeting.

THE CHAIRMAN: Inter-provincial?

PROF. MEISEL: Yes, if it is only the Federal Government they would object to it.

DR. FORSEY: That is not the same thing. Let us wait until we get to that.

THE CHAIRMAN: On this proposition about national economy, it is my impression that the Bertrand brief could live with this. The Levesque brief could not, but the brief we have at the present time is the Bertrand brief. Are we agreed on this? May we go on?

MR. PERRY: I have a reservation. It seems to me this is only stating the first half of the case.

THE CHAIRMAN: You have a reservation but not disallowance.

MR. PERRY: Right, because what is implied in leaving this responsibility with the Federal Government, is that they have powers adequate to carry it out, and this is all covered in the explanatory notes but not in the main proposition.

So that I would add:

"The Federal Government must retain

"the responsibility and have powers

"adequate to meet this responsibility".

THE CHAIRMAN: Yes.

MR. PERRY: Otherwise you can leave them with the responsibility and no powers to carry it out.

THE CHAIRMAN: We are trying to match responsibilities with powers right across the piece, so I think that is quite an appropriate addition.

MR. PERRY: I think it is.

THE CHAIRMAN: Is that agreed? All right:

"The Federal Government should have

"the power to raise revenues for the

"purpose of making unconditional

"transfers to the provinces".

MR. PERRY: I question whether this is really a matter of taxing power or spending power.

MR. STEVENSON: Spending power.

MR. PERRY: Taxing power of the Federal Government is unlimited. The real issue is what power they have for using the money once they have got it.

DR. FORSEY: Yes, but I think the intention behind this was to assert that it must have taxing power adequate not only to meet the requirements of its own budget, but also something extra to get money for unconditional ---

MR. PERRY: There is no question of power, though. They have all the power in the world.

DR. FORSEY: But we are re-writing the Constitution. I know they have all the power in the world, of course they have and God couldn't increase it; but we are talking about a revision, and I thought the thrust of this was the kind of claim I have seen sometimes from some provinces, or the exponents of what I take to be their views, that the Parliament of Canada should have just enough taxing power to raise revenue to meet the responsibilities incurred in fulfilling whatever powers it has in the present or a revised 91, specifically enumerated heads, and if it was

getting anything over that it was getting more than it was entitled to, and therefore its taxing power should be cut down.

I think the intention there was to say that in any kind of revision you cannot simply give the central parliament taxing power adequate to meet its specific responsibilities, but it must also have enough extra taxing power to raise these other revenues. I may have misunderstood.

MR. STEVENSON: I think the big question that is going to come up at the next set of meetings is, in essence, the answer to the question which Mr. Trudeau raised at the February conference, when the question comes up. The Federal Government now has unlimited spending power in federal or provincial areas of responsibility, and he is prepared at least, on behalf of the Federal Government, to accept suggestions for considering some limitation of this spending power. So the job is to try to work out some ground rules. Presumably one of the first ones might well be that the Federal Government has the right to raise money or spend it for equalization purposes or unconditional grants; and then the crunch comes when you get into the area of shared cost programmes.

DR. FORSEY: But, you see, it seems to me -- and I may have completely misunderstood this but reading this in conjunction with the next one

about division of revenue sources and some other things that follow about balancing and what-not, it seems to me that what you were trying to say here was, first of all, in general you should match your revenue-raising powers with your spending powers for the specific authority, but in fact you cannot do this completely.

MR. STEVENSON: Right.

DR. FORSEY: Some provinces haven't an adequate tax base, so you will have to have equalisation grants, and therefore the Parliament of Canada will have to have taxing powers over and above what might be needed simply to look after beacons, buoys, lighthouses and Sable Islands, navigation and shipping, the Post Office, naval service and defence and other specific powers. That is what I thought you were driving at.

MR. STEVENSON: In the forecast of expenditure of responsibility of the Federal Government, I think you would build in a factor for equalisation payments.

DR. FORSEY: Exactly, and I thought this is what this was for.

PROF. CREIGHTON: It just does the one thing.

MR. PERRY: This has to be a codicil to some more general proposition. Perhaps the more general proposition is in the next statement.

DR. FORSEY: It really belongs perhaps

after this thing:

"The division of revenue sources

"between federal and provincial ..."

and so forth. Some of this is kind of vague.

I don't know quite what "equalising the burden of taxation and borrowing" means.

PROF. CREIGHTON: How about this, Mr.

Chairman:

"The Federal Government should have power

"to raise revenues for the purpose of

"making unconditional transfers to the

"provinces as well as for the purpose

"of carrying out its own constitutional

"responsibilities,"

or something of that kind.

DR. FORSEY: It is a little more

accurate to say the Federal Parliament, is it not?

It is Parliament which at present has the power

to raise money by any mode or system of taxation.

THE CHAIRMAN: Have we got the wording

in on that, "for meeting --- "

DR. FORSEY: "... as well as for meeting

--- "

PROF. CREIGHTON: I should like to

put what I put second, first, because it seems to

me most important that we should have power to

raise revenue to carry out its own constitutional

responsibilities and then put:

" --- and also for the purpose of

"making unconditional grants to the
"provinces".

MR. STEVENSON: I would think if you
changed the order you may not need the caveat on
the second.

THE CHAIRMAN: Is equalisation or
unconditional transfer a constitutional
responsibility though?

MR. STEVENSON: Right, so you have to
put it in there.

THE CHAIRMAN: Yes.

DR. FORSEY: If you think it is a
constitutional responsibility, it might be worth-
while to make it explicit by saying: "including
the responsibility for making equalisation
grants".

THE CHAIRMAN: Are equalisation grants
part of the Constitution?

PROF. CREIGHTON: They are not.

MR. STEVENSON: Part of the spending
power.

DR. FORSEY: You are talking about a
revised ---

THE CHAIRMAN: I know, but I am
wondering, therefore, is it the suggestion that it
should be?

DR. FORSEY: No, you would not include
it among its constitutional responsibilities.
Well, you could, I suppose. Presumably you would,

probably. I think it better to say, "and".

THE CHAIRMAN: Then by reversing the order is that acceptable?

DR. FORSEY: Put "Parliament", because there is far too much confusion, I find, especially among my students, between Parliament and Government. They are always endowing the executive with powers which no executive ought to have.

THE CHAIRMAN: Even if they do. All right, is that agreed? We might take a break for a minute.

MR. STEVENSON: During the break, if members have not done it, you might wish to take a quick look at the little paper on the spending power, because it may serve as a bit of an introduction to the next three or four -- not that the propositions are necessarily totally consonant with the paper.

--- Short recess.

THE CHAIRMAN: Gentlemen, someone raised -- I guess Dr. Forsey -- the point about shared cost programmes, whether this was a necessary qualification in the proposition we just dealt with. Perhaps one way of doing that, unless it would change the meaning unduly, would be to strike the words "unconditional".

MR. STEVENSON: I would much prefer to see "unconditional" left in, but with a rider for

a limited amount of conditional, in that otherwise you are back in an open door.

THE CHAIRMAN: I know, but of course I am worried about the shared cost door altogether, I must say myself. Later on we have a proposition about the ---

MR. STEVENSON: Ground rules for shared costs.

THE CHAIRMAN: For doing as such.

DR. FORSEY: Well, you could provide something, I suppose:

".. and such conditional transfers
"as may be deemed necessary".

THE CHAIRMAN: ".. as may be agreed upon from time to time".

MR. STEVENSON: Something like that.

PROF. CREIGHTON: Sir Robert Borden.

DEAN LEDERMAN: ".. such conditional transfers as may be agreed upon from time to time" -- by whom?

THE CHAIRMAN: By the provinces and the Federal Government. I am thinking of that in the context of linking it to the later proposition which, if it is accepted, has that spirit. Or "as may be instituted or established".

PROF. BRADY: Well, only after adequate consultation at that time. After all, the complaint of the provinces about many shared-cost programmes is the inadequacy of consultation

beforehand. There were propositions put to them, as it were, and they had either to accept or reject, and to reject it, after all, Ontario would be paying for them anyway. That was one of the troubles.

THE CHAIRMAN: Perhaps we should ponder the shared-cost principle at this time in conjunction with this, because if you turn on a few pages you will find:

"The use of shared-cost programmes
"in fields of provincial jurisdiction
"should be minimized".

And when you read the explanation it seems to me the explanation points out, in terms, that not only should they be minimized but they probably should not exist.

DR. FORSEY: Well, that is not in accordance with what you have got in this bundle of papers, is it, "Notes for an Ontario Position on the Use of Federal Spending Power". You do allow there for some shared-cost programmes, which presumably would come into the provincial jurisdiction, or are you thinking merely of the provinces sharing the cost of some programmes which fall wholly within Dominion jurisdiction? This, I should think, is a counsel of perfection, but if these notes are something which you are putting in your position, you cannot simply exclude shared-cost programmes. If on the other hand it

is going to exclude shared-cost programmes, the notes go in the wastepaper basket.

THE CHAIRMAN: I would like to put on the floor here a consideration of the future of new shared-cost programmes. When the Medicare thing finally comes to rest, one presumably will have seen through the big welfare framework, and the question about future shared-cost programmes then becomes a different kind of question because it takes you largely into the economic field, where you might ask if things might not be better done by devices directed at reducing regional disparities or stimulating economic activity in different parts of the country, quite separate from a shared-costs mechanism which becomes a kind of permanent, binding thing.

PROF. FOX: Isn't the essential point that you are trying to get at here, Mr. Chairman, the principle of consultation and agreeing before major plans are undertaken, major plans of any kind? Isn't that really what bothers you about such things as shared-cost programmes, if they are offered without adequate consultation?

THE CHAIRMAN: Frankly, what bothers me is an illogical proposition, because if you have effective distribution of revenue sources and if you have provision for unconditional transfers to cope with the problem of equity, then you have to ask what is the residual merit of shared-cost

programmes. The merit is less in the financial sense perhaps than in providing some administrative binding glue between the two levels of government; in which case you might ask if that is not an indirect and cumbersome way of doing this, and shouldn't you be doing it by other machinery? I am a little uncertain about not the past but the future of shared-cost programmes, what they should be.

PROF. FOX: That is why I am stressing the consultation, because that would give you the opportunity to engage in discussion and argue your point through, whatever the merits of the particular instance were.

DEAN LEDERMAN: In this connection I would make a couple of points, if I may, briefly. The first is that you could have genuine consultation, what Mr. Smith of Nova Scotia calls meaningful consultation, but you still have not solved the problem of decision-making when the consultation is all done. The right to be consulted does not mean the right of the consultee to have his views prevail, and you still get back to the hard, gritty question of who has the power of decision in the end.

The second thing about shared-cost programmes, is it not a bit Utopian to think we can ever eliminate them altogether in what Eugene has called the modern, pluralistic technological,

affluent, urban society?

There are a number of things, and pollution has been mentioned; you are never going to be able to say all the responsibility for pollution is federal or all of it is provincial. We are not going to abolish the municipal level of government; you may come to larger units, but you are not going to abolish it. We are not going to abolish provincial levels of government, we are not going to abolish the federal level of government.

There are a number of things, and pollution is just one example, where an integrated plan for dealing with the social problem, which is real, will necessarily involve all three levels of government and their powers and their resources and their administrators, and you will have to have complex inter-governmental agreements about them, and in those complex agreements you will have to have financial clauses about sharing the costs of doing all these things. There, I am finished.

PROF. BRADY: Those agreements worked out in specific contracts are somewhat different from the shared-cost programmes that you talk about, those developed in the 1950's.

DEAN LEDERMAN: I like some of what I read in this document. I have just read it quickly.

PROF. BRADY: I think this document is pointing the kind of path to pursue in coping with the collaboration and co-operation in demands, and action.

DEAN LEDERMAN: The Province of Ontario can do a great deal about Metropolitan Toronto, but the Federal Government has the last word on what kind of airport, what the air transport into the metropolitan area is going to be, and what kind of airport you are going to have here, what kind of planes you can catch in it and so on. That is just one example.

DR. FORSEY: I think the things that are suggested in this "Notes for an Ontario position on shared-cost programmes" sound quite reasonable. I am a little puzzled by one item that is neither here nor there at the moment. I am inclined to think that you do not want to take up a firm position beyond what you have got already, about minimizing shared-cost programmes. To go beyond that you may have to do a bit of back-tracking. If you are going to allow for any shared-cost programmes at all, then you had better put in this particular thing we were looking at, some kind of proviso about it, so that you just do not, as it were, inadvertently omit it.

THE CHAIRMAN: Yes.

DR. FORSEY: You might even say:

"..and for such shared-cost programmes

"as may come within the provisions

"outlined on page so-and-so"

and then get a separate page dealing with shared-cost programmes along the lines of perhaps what is in your notes.

DEAN LEDERMAN: As a matter of fact, you are not going to be able to deal with pollution of the Great Lakes and St. Lawrence without the States of New York, Wisconsin and the Government of the United States, let alone the Government of Canada.

DR. FORSEY: Or pollution around Ottawa without the co-operation of the Government of Canada, the Government of Quebec, and the Government of Ontario.

MR. STEVENSON: I don't know whether it is possible to distinguish between shared-cost programmes and joint programmes. There is a semantic jungle, I think, when you get into this area. I think traditionally when we have been talking about shared-cost programmes we have been talking about some of the continuing operational programmes such as the ones which are included in the provisions for opting-out -- Medicare, and so on.

I think when you get to things like pollution or any kind of capital project, Trans-Canada Highway, and so on, you may get into an area, perhaps, of concurrent jurisdiction,

where both levels of government have operating responsibility in part of it, and to carry them out effectively you have to have both levels of government spending money, perhaps, on tangible goods. I think there, as Professor Lederman said, you are hardly going to be able to avoid some kind of shared-cost or joint approach.

DEAN LEDERMAN: Excuse me, we are using "concurrent" in two slightly different senses. Concurrence to me, as a constitutional lawyer, is complete concurrence, like the agricultural power -- both governments have all powers over agriculture; but in the example I gave of the Toronto Airport, Ontario can do nothing about an airport constitutionally, legally, who can fly in and out of it. Yet you cannot deal with the planning of the metropolitan area without planning that airport.

THE CHAIRMAN: Why couldn't Ontario do anything about an airport?

DR. FORSEY: Constitutionally, absolutely nothing.

DEAN LEDERMAN: It is Federal jurisdiction.

THE CHAIRMAN: How is it possible to build all the airstrips we are building in Northern Ontario?

DEAN LEDERMAN: Well, you can build airstrips, if you like, yes, as an owner of land, but you will fall under the regulations of the

Federal Department of Transport in the management and operation of airports. You have to have lights and radio facilities, radar facilities and all the rest of it. Indeed, I think you would have to have a licence.

PROF. MEISEL: Could Ontario not build, if it wanted, a colossal airport here and simply apply to the Federal Government for ---

THE CHAIRMAN: That is what I was wondering.

DEAN LEDERMAN: Better apply first before you build it.

PROF. MEISEL: All right, sure, but it seems to me that if Toronto wanted to build an international airport, it could make arrangements with BOAC, Sabena ---

DEAN LEDERMAN: Now you want to use the provincial spending power to buy your way into a federal field of jurisdiction -- exactly what you are proposing.

PROF. MEISEL: No, I am simply acting as a commercial -- well, I think we are getting off it, but provided you abide by the federal regulations in areas which affect the Federal Government, why can't you take the initiative in a thing like an airport; simply build an airport and then make arrangements about meeting the requirements which the Federal Government establishes about safety?

DR. FORSEY: I could do that or you could do it, or we could form a limited company around this table to do it, but it does not affect the constitutional position at all.

MR. PERRY: Isn't all Bill is saying that anybody who builds airports comes within the rules laid down by the Federal Government?

PROF. MEISEL: In the West are there not municipal airports?

THE CHAIRMAN: Sure.

PROF. MEISEL: Which belong to the city?

MR. PERRY: They would be operated within Federal regulations.

DEAN LEDERMAN: But they either started with or they have now a licence from the Federal Department.

THE CHAIRMAN: Most of the small airports are municipal airports.

PROF. MEISEL: And were presumably local decisions.

THE CHAIRMAN: Sure.

PROF. CREIGHTON: They were a long time back, in some cases.

MR. PERRY: I think the Army vehicles have Ontario licences.

THE CHAIRMAN: In fact the majority of airports in Canada, I would say, are municipal or township or local.

DEAN LEDERMAN: Has it not been held in

the Courts that the "GO" transport system is part of the CNR and subject to federal jurisdiction?

THE CHAIRMAN: Because they are using their rails?

DEAN LEDERMAN: Yes.

THE CHAIRMAN: You get into a nice distinction if you rent out your facilities, though.

PROF. CREIGHTON: Might get a little action.

DEAN LEDERMAN: It is an important point.

PROF. CREIGHTON: Exactly. That is why I say some of these characters up here are sort of getting restive.

DEAN LEDERMAN: All right, leave the airports alone. Navigation and shipping is a federal subject, and what about the Toronto Harbour?

THE CHAIRMAN: That is an interesting point. Who has jurisdiction over Toronto Harbour? Leaving the land aside, Toronto Harbour Authority is a municipal commission, is it not?

DEAN LEDERMAN: Is Toronto one of the confederation harbours?

DR. FORSEY: It is not under the National Harbour Board, I know that. It is under Dominion jurisdiction.

DEAN LEDERMAN: Kingston is a confederation harbour. Toronto must be.

MR. STEVENSON: There are seven National Harbour Board ports, none of which are in Ontario. The other major ports in the country are run by harbour commissions, which are still subject, though, I think, to federal legislation but not to federal support or direct federal control the way the National Harbour ports are.

DEAN LEDERMAN: Labour relations on the docks are subject to the Canada Labour Relations Board.

MR. STEVENSON: I think the main difference is Toronto Harbour is not eligible for any federal assistance.

DR. FORSEY: Subject to all the regulations dealing with harbours as such.

DEAN LEDERMAN: My point is that in a great urban area you get an interlocking of the mutually exclusive federal-provincial powers. You cannot deal with the whole thing without each agreeing to use its own powers as part of an integrated scheme. I think, Don, you were using "concurrency" in that sense.

THE CHAIRMAN: Joint programmes.

DEAN LEDERMAN: Concurrency in relation to the total planning of the country.

MR. STEVENSON: Yes, I was thinking of it also in case one wanted to expand specific items under concurrent heads.

DEAN LEDERMAN: It is quite a proper use of the term, but in the technical constitutional sense there is a difference.

THE CHAIRMAN: Looking at this proposition, the only thing that worries me about saying:

"The Federal Parliament shall have
"the power to raise revenues to meet
"its own constitutional responsibilities
"and for the purpose of making
"conditional and unconditional transfers
"to the provinces"

or something of that kind, is this, that we have argued here all along that there is a lack of balance between revenues and expenditures between the two levels of government; and that we foresee, as a result of the access to the elastic tax fields, the Federal Government coming into a position where it will have very great revenues, considerable revenues, which it is then in a position to raise, to initiate shared-cost programmes in provincial jurisdictions which may not be acceptable to provincial jurisdictions; so that is a strong position that this government has made over and over again.

If you simply say here quite blandly that it has power to raise revenue for the purpose of making conditional transfers, then it is really an invitation to continue to do the kind of things

which have been a real thorn under the saddle of federal-provincial relations in the last twenty years, in our view.

DR. FORSEY: Can you not provide for it by putting in some such qualifying phrase as:

".. and such share-cost programmes

"as fall within the limits set out on

"page such-and-such"?

If you are going to have something about minimizing share-cost programmes ---

THE CHAIRMAN: I agree.

DR. FORSEY: I you are going to have some kind of explanation about what you mean by minimizing them, I am afraid if you try to squash the whole business, three pages of stuff, into one heading, you have got an insoluble problem.

THE CHAIRMAN: You can say:

"and such conditional transfers as

"may be made within the spirit of

"resolution such-and-such".

DR. FORSEY: That sort of thing.

DEAN LEDERMAN: Take pollution again. There is going to be an horrendous expenditure necessary on research. Who is going to put up that money? Whose responsibility is it?

MR. PERRY: What about all the existing shared-cost programmes, too? They are not going to die very quickly, I don't imagine.

THE CHAIRMAN: Well, I just had some

interesting discussion about that, however. I am trying to look forward to the years -- what happens in the early seventies when the hospital programme comes up for re-negotiation, and in particular when the Federal Government reaches that time period by which it has said it will turn over the fiscal equivalent in Medicare, and when the current post-secondary education shared-cost programme runs out, what will happen then?

DR. FORSEY: Perhaps by that time you will have a new distribution of powers and some of these problems will cease to exist.

THE CHAIRMAN: Maybe.

DEAN LEDERMAN: I was going to say that in the notes on Ontario's position here, you mention that the point could come where fiscal equivalents could amount to so much transfer that the Federal Government loses its fiscal control of the country as an instrument for the management of the national economy, and that you might have to go back to some unconditional transfers just to give them that management power.

THE CHAIRMAN: Well, I haven't an exact wording on this, but have we got the sense, that we want to add some such qualification as "such conditional transfers as may be agreed upon within the spirit of the resolution on share-cost programmes", some way of effecting a linkage there;

but editorially is that the sense?

PROF. BRADY: I think, Mr. Chairman, you can leave it at that to be worked out.

DEAN LEDERMAN: Why not say the cost of shared programmes, not shared-cost programmes?

PROF. CREIGHTON: Shared or joint programmes.

DEAN LEDERMAN: Shared or joint programmes. Pollution and urban renewal are the problems, not money. Admittedly the money has to be found, and you have to talk about who is going to contribute how much.

THE CHAIRMAN: That is right.

DEAN LEDERMAN: It is shared or joint programmes that are inevitable.

THE CHAIRMAN: All right.

DEAN LEDERMAN: And the sharing of cost follows.

THE CHAIRMAN: May we go on then to the next one:

"The division of revenue sources
"between federal and provincial
"governments should as far as possible
"equalize the burden of taxing and
"borrowing ... "

etc.

PROF. FOX: What does that seek to convey, Mr. Chairman?

PROF. CREIGHTON: I guess we don't

understand this.

PROF. FOX: That every citizen of Canada, regardless of what province he lives in, should be bearing the same burden, combined burden of federal and provincial taxation -- some per capita burden relative to income?

MR. STEVENSON: I think the intent is as among the eleven governments or as among the two levels of government.

PROF. CREIGHTON: They don't have the burden.

MR. STEVENSON: If you measure the gap between the revenue-raising potential and expenditure responsibilities over a given period in the future and there still is a gap, then that gap could so be split that one level of government does not have all the responsibility to raise new tax fields or go into debt, but that that burden of filling the gap be distributed between the two; so that essentially, without tax changes or borrowing changes there are revenues at each level rising more or less in tune with their expenditure responsibilities.

PROF. FOX: You mean each level in terms of the provinces; this is an average for all of the ten provinces together?

MR. STEVENSON: Yes.

PROF. FOX: Vis-a-vis the Federal Government?

MR. STEVENSON: Yes.

PROF. FOX: Regardless of what the differential is amongst provinces.

MR. STEVENSON: Yes, I think so; that should probably be spelled out, that it is between the two levels.

DR. FORSEY: How does this go again?

MR. STEVENSON: Well, suppose the Tax Structure Committee or some other federal-provincial group forecast revenues and expenditures for the two levels of government over a five-year period in advance, and it calculated that the federal expenditure responsibilities were likely to increase at an average rate of six per cent a year, and federal revenue-raising capabilities were likely to rise at also six per cent a year, without any changes in tax rates; then the provincial-municipal level together, expenditures are likely to increase at the rate of, say, twelve per cent a year, and its revenue base likely to produce an average increase in revenue of only five per cent a year. This means the one level, the federal level, will have no problem of raising taxes.

THE CHAIRMAN: Of raising revenues.

MR. STEVENSON: Of raising revenues at all, because, given the elasticity or given the structure of their revenue sources, the revenues would take care of their expenditure responsibilities;

whereas the other level would have the full responsibility for increasing tax rates or going into debt.

DR. FORSEY: What are you proposing to do about it?

MR. STEVENSON: Dividing the revenue sources in such a way that there is some kind of relationship between the rates of increase at each level.

DR. FORSEY: In other words, transferring a deficit from the local government to the central government.

MR. STEVENSON: Or if the forecast went the other way, doing it the other way.

DR. FORSEY: But the locus of the deficit will be different.

DEAN LEDERMAN: Not the deficit, but the means of meeting the deficit.

PROF. FOX: One or the other.

DR. FORSEY: You were talking about the 6/6 and 12/5, I think. If you take away some of the "6" revenue and hand it to the other people, there would be a deficit, surely.

MR. STEVENSON: Right.

DR. FORSEY: So what does the Dominion Government do when it hasn't got enough revenue to meet its responsibilities.

MR. STEVENSON: Either borrow a little or raise taxes a bit. Similarly, you would still

have quite a gap on the other level for the provincial-municipal sector as a whole to raise its tax or borrow a bit, too.

PROF. FOX: What you are saying is that you want the ratio of expenditures and income of the two sets of governments to be approximately the same.

PROF. CREIGHTON: But look here, you can't do this, because you have said this should not be so in respect of the Federal Government, and for two reasons. This sentence is wrong:

"It should not be expected that one
"order of government should raise
"revenues considerably in excess of
"its spending requirements and then
"transfer this surplus to the other
"order of government".

But you have already said in two ways why the Federal Government should do precisely that -- first, to control the economy and, secondly, to give shared programmes and make the grants made to the provinces.

DEAN LEDERMAN: Mutual disparities.

PROF. CREIGHTON: Yes, so you must have more revenue than it needs for its actual function.

PROF. FOX: You could take net figures, take out those transfers and compare net figures.

MR. STEVENSON: That is, I think, the real point.

PROF. CREIGHTON: You have got to explain that, because this sentence says exactly the opposite.

DR. FORSEY: And the balancing over time -- surely it is balancing across the levels of jurisdiction.

DEAN LEDERMAN: What bothers me as a taxpayer is that the federal and provincial governments forget the level of government that is at the end of the line, that is the municipal governments all across the country. They are the forgotten people.

MR. STEVENSON: I think what we should probably put in here, instead of mentioning only provincial governments, provincial-municipal as a combined sector.

DEAN LEDERMAN: What no-one else will pay for, the municipality end up having to tax for and provide.

MR. STEVENSON: In the Tax Structure Committee projections earlier, one took provincial-municipal, as one half of the equation, because there is quite a difference between the share that the provinces take of local expenditures in different provinces.

DR. FORSEY: When you say:

"Provision should be made for regular

"reviews of the spending responsibilities

"and revenue-raising capabilities of the

"two orders of government",
 what exactly have you in mind there in the way
 of constitutional provision, or are you going to
 have your revenue and expenditure powers inserted
 with a time limit on them and say that every five
 years (or whatever it may be) there is going to
 be a revision of this part of the Constitution;
 or what are you going to put in there? What
 kind of clause would you put in to do this sort
 of thing? Are you going to have a special
 amending process or special amending formula for
 revenue and taxation provisions of the
 Constitution?

MR. STEVENSON: I am not sure that this
 needs to be a constitutional provision.

DR. FORSEY: My hat, you have got to
 lay down your division of revenues, and revenue-
 raising powers somewhere in the Constitution,
 haven't you; some provision you have to have for
 it. If you are going to have reviews, you are
 going to have reviews now, in a sense, and say:
 "Will you please not tax so much so that we can
 tax more?", and the answer is, "You do it". I
 don't know what provision you are talking about.

MR. STEVENSON: What would happen if this
 kind of agreement were arrived at now among the
 two levels of government, would be that it would
 be written into tax collection agreements or tax-
 sharing agreements, or perhaps the federal

legislation affecting federal-provincial affairs -- not necessarily in the Constitution.

DR. FORSEY: But it is under the heading of "Distribution of Powers".

PROF. CREIGHTON: Distribution of powers is what you are talking about.

MR. STEVENSON: Right, but I think all of these propositions relating to the spending power and all of the discussion, I do not think need to reflect themselves in the end in formal provisions in the Constitution. I think they at least have to be guidelines to the operation.

DR. FORSEY: This puts a new face on it altogether. I thought we were talking about propositions to be presented to a Constitutional Conference or Continuing Committee thereof or committees dealing with revision of the Constitution, and the division of powers if there is distribution of powers. If you are merely talking about arrangements which may be arrived at under a new Constitution or the present Constitution, well, all right; but you have got a distribution of powers there now on revenue. What are you going to propose, a new one or merely going to say, "Let us have a talk about how we use the existing distribution"? I thought you meant an actual constitutional proposal.

MR. STEVENSON: I think when Mr. Trudeau speaks about limitations, for example, to the

Federal spending power, he may or may not envisage that this be spelled out specifically in the Constitution. It may not be necessary.

I think the important thing is that in the process of the constitutional discussions an agreement is arrived at as to what the limitation should be. Maybe the agreement would involve considerably more detail than what actually ends up as constitutional provision, and similarly here.

DEAN LEDERMAN: I say with misgivings in the presence of economists who know far more about it than I do, that I am frightened by the phrase "revenue sources", which means we are going to take this tax, that tax and the other tax and say, "You can levy this kind of tax and you can't levy that kind". I do not think revenue sources can be matched with spending responsibilities, but I do think total revenues can be divided.

PROF. CREIGHTON: That is a different matter, though.

DEAN LEDERMAN: In accordance with spending responsibilities, and I do think that the Ontario position that there has to be better consultation and more consultation about this is correct; that Ottawa is far too much and far too often saying, "We are all right, Jack; you go and look after yourself".

MR. STEVENSON: What about "revenue-

raising capabilities" instead of "sources".

PROF. CREIGHTON: That is the same thing.

DEAN LEDERMAN: Same thing. You see, I would like to see the Federal Government run one, let us say, personal income taxation system, one corporation income tax system for the country, but as a collector and one system as to deductions, rates, depreciation and all this kind of thing that goes into a taxing statute; but simply run that system as a collector subject to agreement about the division of the harvest.

THE CHAIRMAN: What if you get into fundamental differences of view about things like progressivity?

DR. FORSEY: Like what?

THE CHAIRMAN: Like the progressivity of the tax system.

DEAN LEDERMAN: I don't know. This is where I am just out of my depth.

THE CHAIRMAN: I say it as an administrative problem in terms. It is a problem we are running into now, where you have got governments having different views as to the nature of a progressive tax system.

PROF. BRADY: Trudeau had reference or made references, I think, to setting rules, determining rules, to govern spending, rules that would obviously have to be worked out in conferences. How he expected agreement to be

reached, I don't know. Presumably he expected agreement could be reached, but they would be rules that would pertain really to how the money was spent. I did not get the sense that he was thinking really of dividing the taxation or revenue-collecting agencies.

Now, if I understand you rightly, Don, you rather thought he did go that far.

MR. STEVENSON: Mr. Trudeau?

PROF. BRADY: Yes. His remarks, of course, are very brief.

MR. STEVENSON: What I think he was saying to all the provinces was that, "Do you believe what Quebec has said, that the Federal Government should under no circumstances spend money in provincial fields except for equalization, or do you believe the Federal Government should have the right to enter into agreements such as trans-Canada highways, spending money for bi-lingual education, shared cost programmes there. If you don't agree that the Federal Government should have the right to introduce a Medicare scheme --", which several of the premiers were saying -- "then what should be the ground rules under which the Federal Government should be constrained from doing so?"

PROF. BRADY: Yes, and presumably what should be the rule about how the government would give money to the provinces.

THE CHAIRMAN: I wonder if what we are trying to say is this, that revenue sources should be distributed between federal and provincial governments according to the constitutional expenditure responsibilities bearing on each of these governments? Isn't that what we are trying to do, is get a better matching of revenue sources to expenditure responsibilities that exist under the Constitution or that will exist under the Constitution?

PROF. CREIGHTON: But your unconditional grants are not constitutional.

PROF. FOX: Do revenue sources include the transfer payments, or are you thinking only of taxes?

THE CHAIRMAN: I was thinking of tax sources and redistributive sources, which would include equalization payments.

PROF. FOX: Well, that would make sense, but then is that going to be included in the Constitution in your equalization ---

THE CHAIRMAN: You don't even need to say perhaps under the Constitution, but simply say according -- I think the problem you face here, if you talk about expenditure responsibilities, you want to make sure that you are talking about things that governments really have to do to discharge their obligations to people, and not that they might want to do to design things of

political appeal that may or may not be necessary by any absolute understanding. It is on that point, I think, you get into trouble with this expenditure-revenue problem, because it is a question of whose definition of what are responsibilities in terms of programmes. You can say a province has the responsibility for education. All right, what does this mean? What kind of education, how much, for whom, at what cost?

PROF. FOX: I really wonder whether you can ever spell all that out in this type of proposition, you know, without sort of having a proposition a page long; because it seems to me some of those difficulties involve such definitions and arguments which may be quite unacceptable to other parties that you can hardly erect it into a constitutional principle.

DEAN LEDERMAN: If you state in the previous proposition:

"The Federal Government should have
 "the power to raise revenues for the
 "purpose of its own direct responsibilities
 "and for the purpose of making
 "unconditional transfers to the
 "provinces and conditional transfers as
 "parts of agreed shared-cost programs"
 and then you also continue the present position of heavily overlapping taxation powers, haven't

you done all you can do under the Constitution, and the rest is for periodic, detailed federal-provincial inter-governmental agreement, periodically reviewed, and in a better spirit than we have had so far, not on the one-upmanship basis to which Mr. Robarts was, I think, properly objecting, but on a basis where there is meaningful consultation.

DR. FORSEY: I think that is about all you can do. I really think it almost passes the whit of man in all the circumstances in a country like this, to try to divide your revenue sources so that you get anything that will match the responsibilities, especially in a world changing as fast as ours; whereas back in the days of 1867 it might have been fairly easy to do -- in fact, they thought they had done it, I suppose, for practical purposes. It seems to me now an extraordinarily difficult thing to do in a constitutional document. I think it is one of the things you have got to work out within the limits of a pretty broad constitutional arrangement.

THE CHAIRMAN: That is why I wonder if we are trying to gild the lily in trying to improve on our proposition 34 which we already have, which I think conveys the spirit without dotting all the I's and crossing all the T's:

"Federal-provincial tax sharing

"arrangements must be adequate to
 "enable each government to discharge
 "effectively its constitutional
 "obligations".

I think that is about ---

PROF. CREIGHTON: As far as you can go.

THE CHAIRMAN: That is an aspiration
 without it really trying to ---

DR. FORSEY: I think, by the way,
 "painting the lily and gilding the refined gold".

MR. GREATHED: Gild the lily.

PROF. CREIGHTON: You can't gild the
 lily.

THE CHAIRMAN: The thing is so
 metaphorical in any event it is difficult for me
 to imagine in practise. (Laughter).

DEAN LEDERMAN: We are off the gold
 standard now.

THE CHAIRMAN: However, I ask the
 staff: why are we into this other one anyway?
 Were we trying to improve on this 34 in this one?
 Is it just part of the total package?

MR. GREATHED: It may have been a little
 unintentional.

MR. STEVENSON: I think too, Mr.
 Chairman, undoubtedly the next set of discussions,
 which talk about taxing and spending powers, is
 just bound to get into a discussion of arrangements
 which will not end up in the Constitution.

THE CHAIRMAN: Yes.

MR. STEVENSON: But the discussion, to be meaningful, has to extend beyond pure constitutional provisions.

DEAN LEDERMAN: It will have to be a discussion at a point at which you leave potential constitutional provisions and get into things that you would do but which you would not put into a Constitution, and that point will have to be defined.

MR. STEVENSON: Exactly. I do think, though, that the proposition approach was meant to cover not only principles which must go into the Constitution, but also some principles relating to the operations of the Constitution which perhaps would be enshrined in legislation or federal-provincial agreements.

DEAN LEDERMAN: Then the phrase, "Distribution of powers" is a term of art which refers to specially entrenched sections of the Constitution that do precisely that.

THE CHAIRMAN: Then I think the problem here, if this is not too simplistic, is to say that, one, the tax-sharing responsibility concept is discharged in that earlier proposition; two, we now come not to distribution of powers here, but to a proposition on the machinery of government, inter-governmental machinery; and, three, what we are then trying to say in this

proposition is that provision should be made for regular reviews of the spending responsibilities and revenue-raising capabilities of the two orders of government.

DEAN LEDERMAN: As a matter of periodic inter-governmental agreement.

THE CHAIRMAN: Please tell me if this destroys what you are aiming at in this.

PROF. FOX: I think that is wise, because you are really putting the emphasis upon the machinery then.

THE CHAIRMAN: Yes.

PROF. FOX: In this proposition; whereas the other had the emphasis upon the principle.

MR. STEVENSON: I think we might find the secretariat at the Constitutional Conference probably sticking a number of propositions under the general heading of "Distribution of Powers" that don't really relate specifically to the constitutional heads.

PROF. BRADY: This should be definitely clarified in a position taken in relation to it. There are others, but I think you have to be clear what you mean by "Distribution of powers" and not drag in other elements.

May I ask, Mr. Chairman, what is your plan? There is a lot of this material here. Were you planning to go on?

THE CHAIRMAN: I am in your hands.

PROF. BRADY: My opinion is this Committee has probably reached a point (certainly I have) where fresh thinking today ---

THE CHAIRMAN: You mean you are tired.

PROF. BRADY: --- is dwindling.

Whether it is useful to continue discussion when you reach that point, I am not so sure. At any rate, I put the question.

MR. GREATHED: With respect to Dr. Brady, Mr. Chairman, I just mention that the next meeting of the Continuing Committee is going to be in mid-April, and if we have any propositions at all in their hands, we will have to -- when I was talking to Ed Gallant, he was talking of a date in early April, April 5th or 6th, and therefore wanting to get through as many as possible, but I don't want to push.

PROF. BRADY: I think it is almost desirable to have another meeting, isn't it? You might get more help from this Committee.

FATHER MATTE: Will you have more propositions to make?

MR. GREATHED: I doubt we will have too many more between now and April 6th.

PROF. CFEIGHTON: Quite a few more we haven't looked at.

MR. GREATHED: I would suggest about half a dozen.

THE CHAIRMAN: We have dealt with the shared-cost one, I think, in part. Have you been through these enough to have formed a view as to how contentious they are for you? I certainly don't want to impose upon people any longer today, but there is a real practical problem about the pressure we are under as a result of the mandate of last February.

DR. FORSEY: There is quite a bit of stuff yet to come, Mr. Chairman. For some of us who have come from outside Toronto, this means then simply deciding to stay overnight. I hope I could find accommodation; I daresay I could. It is easy enough for you who have just to go home for supper in the outskirts of this vast metropolis, but not so easy for me. However, my presence is not indispensable. I think I shall probably clear out anyway.

THE CHAIRMAN: The other alternative is to ask you to submit your written comments on the remaining propositions.

MR. GREATHED: This would be helpful.

MR. STEVENSON: Perhaps when this meeting finishes, if anyone does have written comments on the sheets in front of them, perhaps they could pass them to Ed or one of us at this point, and that would at least be a start.

THE CHAIRMAN: I think these things are very important to us, obviously, and should be

carefully considered, no doubt about that.

PROF. FOX: Also, if we have not any written comments on these today, if any of us can make any spare time over the weekend, could we not get them in early next week?

MR. GREATHED: Some time next week would be grand. That would then give us a chance ---

THE CHAIRMAN: I would like to do that and ask the staff that out of your written comments, if there seem to be serious areas of disagreement or inadequacy, we might try and get together with as many people as we can of the Committee for another meeting in the meantime; but there is always the problem of time and the Easter holiday coming up.

MR. STEVENSON: If anyone had any comments on the separate notes that you read today, that might be useful, in that when we get into the intricacies of spending power I understand the Federal people may be presenting two or three papers, rather than strictly adhering to the proposition approach. In this way we might consider in turn doing something the same, just trying to pull together an approach to the spending power in one document, in addition to the proposition.

THE CHAIRMAN: I ask you to send in what you can as soon as you can, and I will meet with

the staff when they have assembled it, and try to exercise some judgment as to the state of affairs and as to what we might do from there on.

DR. FORSEY: I think that is the best thing. I think if we stayed on much longer now, the point of diminishing returns would set in.

THE CHAIRMAN: May I ask one point before we adjourn, and that is the point we left over this morning. I don't know whether you have had a chance to think further about whether something should emanate from this Committee for this other volume on distribution of powers or not. We were talking a bit about that this morning. Anyone have any second thoughts on that question?

DR. FORSEY: Time is pretty short, I am afraid, especially at this time of year for academic people with examinations and things.

PROF. CONWAY: That is such an important question, Mr. Chairman; that really is the question.

THE CHAIRMAN: I really wonder. It is a question of whether someone should dash off -- we have just got into this exercise which has confounded many people for a long time -- and seeing how difficult it is going to be, I wonder if someone could dash off something appropriate on the distribution of powers like that. I don't know.

PROF. BRADY: It may be well, Mr. Chairman, to leave that question to be thought about.

THE CHAIRMAN: I ask you to think about it and let us have any written views or oral views that you might want to put forward.

DEAN LEDERMAN: Could we put it on the agenda for the next meeting? When will be the next meeting of the plenary committee if we follow the four a year rule?

THE CHAIRMAN: If we follow the four a year rule, it would not be until June. However, the Continuing Committee of Officials will meet in the middle of April, towards the end of May, and the Prime Ministers will meet with the Constitutional Committee of Officials on June 18, 19 and 20, I think.

Now, somewhere along the route, as before, we will want a meeting or meetings of this Committee undoubtedly to advise us.

As far as setting dates, I wonder if we should set aside some provisional dates so that you could block them out?

PROF. FOX: I think it would be convenient, especially for our absent members, if we could have even a tentative date suggested now.

MR. STEVENSON: Is the third Friday in May too late?

MR. GREATHED: It may be, Don.

DEAN LEDERMAN: Late April?

PROF. CREIGHTON: There are only six members of the Committee present.

THE CHAIRMAN: The third Friday in May is the 16th, which is the Friday preceding the long weekend. I don't know whether that makes any difference to anyone else.

DEAN LEDERMAN: I will be in the Caribbean -- not that that need upset the meeting.

PROF. FOX: In Anguilla?

DEAN LEDERMAN: No, not Anguilla.

THE CHAIRMAN: My way of life is falling into the position where weekends are not much different to the weekdays, so I don't care. It is all another day. Who is going to be in the Caribbean?

DEAN LEDERMAN: I am.

THE CHAIRMAN: We will gladly meet there.

PROF. CREIGHTON: We will if you will send us there.

THE CHAIRMAN: Maybe some intermediate date might be better and I could advise the members of the Committee. Why don't we make this as a timetable. We will have the work we have done today and any written comments adequate for our meeting in the middle of April, unless I feel there is some pressing need to call you together. Why don't we set aside

Friday, 2nd May, which would give us some time to recapitulate after the April meeting and still time to prepare for the May and June meetings? The 9th or 2nd? When do you leave, Bill?

DEAN LEDERMAN: I leave the 5th, so that suits me fine.

THE CHAIRMAN: We had better get a note out to the absent members to keep that date open. It may be a little easier for the academic members who have been accustomed to keeping the third Friday open because classes may be over.

PROF. FOX: I have a Ph.D. examination at ten o'clock. I could not get here until noon. I am sure you would encounter difficulty with some people. Don't change it now.

THE CHAIRMAN: Can't you change your examination?

PROF. FOX: No.

PROF. CONWAY: Give a pass in absentia.

THE CHAIRMAN: He has got a pretty long time to get nervous anyway if it is already set.

PROF. FOX: She.

MR. GREATHED: Before we adjourn, Mr. Chairman, could I just for the record mention the fact that Dr. Brady has submitted a letter to you, I understand, of a report of the Cultural Sub-Committee.

THE CHAIRMAN: Yes.

MR. GREATHED: On March 14th, and I think that matter may have to be dealt with in plenary later on.

THE CHAIRMAN: I have not read that, but is there anything that I should be worrying about immediately in it? Is it something you wanted to get some views on now?

PROF. BRADY: I will save it.

THE CHAIRMAN: I will get at it and see if there is any feed-back.

I think at some point, Don, you want to talk to Professor Conway who sent a very interesting essay to us, and we may want to see if you can embellish that in any way for this purpose ahead of this book.

Are there any other matters, administrative or other? Well, we might then adjourn until the next occasion.

--- The meeting adjourned at 4:40 p.m.

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